JUSTICE Actualités Report

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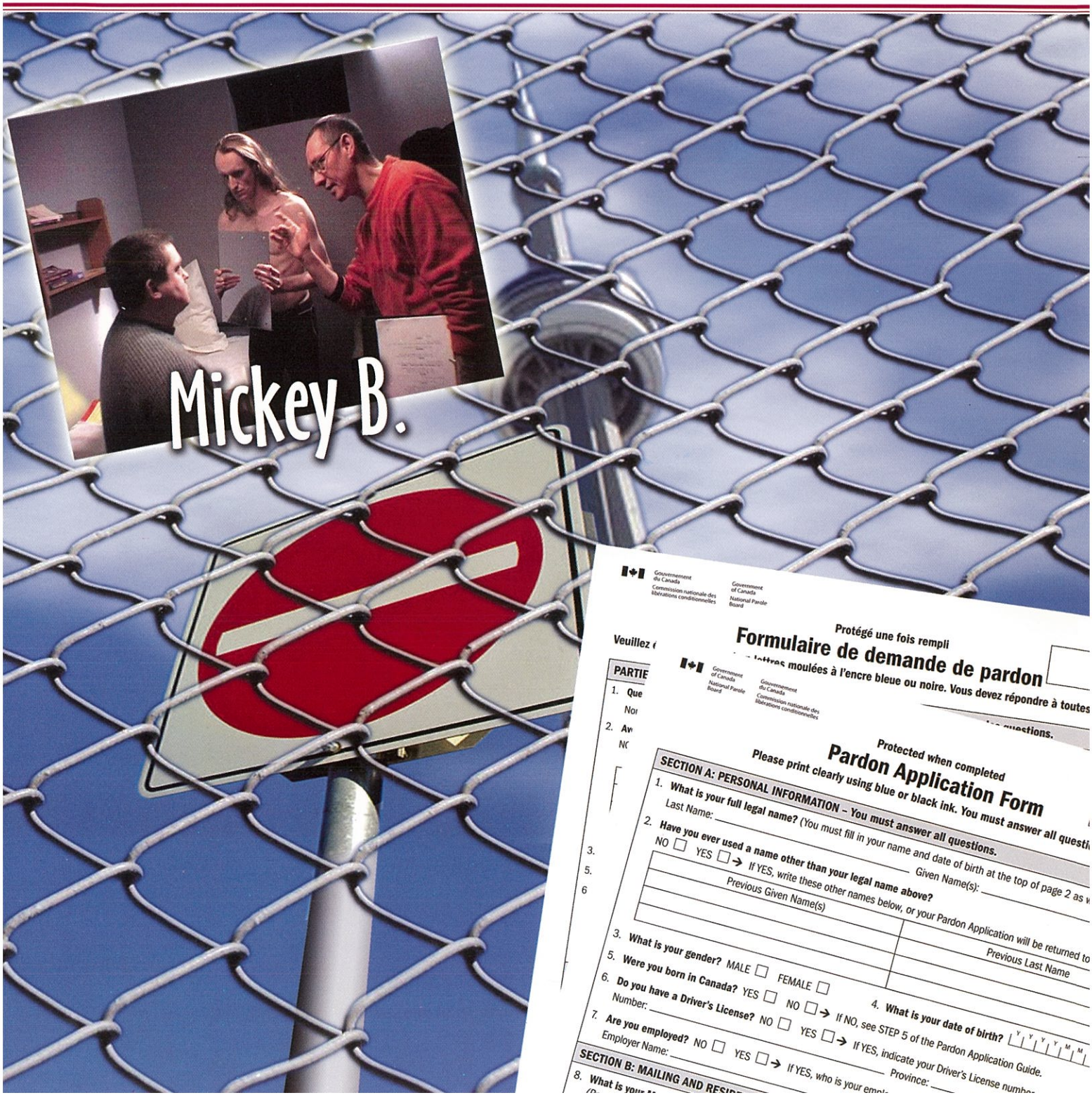
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1. What is your full legal name? (You must fill in your name and date of birth at the top of page 2 as well.)
Last Name:
Given Name(s):
2. Have you ever used a name other than your legal name above?
NO ☐ YES ☐ → If YES, write these other names below, or your Pardon Application will be returned to you.
Previous Given Name(s)
Previous Last Name
3. What is your gender? MALE ☐ FEMALE ☐
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5. Were you born in Canada? YES ☐ NO ☐ → If NO, see STEP 5 of the Pardon Application Guide.
6. Do you have a Driver's License? NO ☐ YES ☐ → If YES, indicate your Driver's License number.
Number:
Province:
7. Are you employed? NO ☐ YES ☐ → If YES, who is your employer?
Employer Name:
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8. What is your

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JUSTICE Actualités Report

Volume 25 No. 3 **Summer/Été 2010**

JUSTICE REPORT carries information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage thought and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact:

ACTUALITÉS-JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec:

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In this issue...

In the last issue of the Justice Report, we discussed the Policy Review Committee's work and included some of the correspondence between the CCJA and the Government on matters of policy. Prior to the termination of the 3rd parliamentary session of the House of Commons, the PRC continued to prepare briefs for submission to the Standing Committee on Justice and Human Rights. We submitted a brief on the Government's proposed elimination of the Faint Hope Clause for life-sentenced prisoners, and another on proposed restrictions for granting pardons to criminal record holders. When Parliament ended for summer recess, S-6 on Faint Hope was still in Senate.

As for the Act restricting pardons, C-23, you will recall the volley of media reports about convicted sex offender Graham James receiving a pardon three years ago, and speculation over whether and when Karla Holmolka would follow suit. These reports propelled the Government to force a vote on the last day prior to recess. Whereas the PRC advocated retaining the current wait times for obtaining a pardon (now called a 'record suspension'), the government passed the Bill doubling the wait times for a suspension, from three to five years for a summary offence and from five to ten years for an indictable offence in an effort to thwart Homolka's potential application.

While the summer has been relatively tranquil, we have nonetheless had a flurry of contributions for the Justice Report on a wide array of topics. This issue therefore offers the reader a variety of opinions and articles, ranging from the prevention of deaths in custody to an account of ICOPA XIII, the penal abolition conference held in Belfast, this past June.

Canada's Correctional Investigator, Howard Sapers, has just returned from a trip to the UK where he met with representatives of the Ministerial Roundtable on Suicide and the Forum for Preventing Deaths in Custody. His article *"Safer Custody: What Canada Can Learn from the United Kingdom"* discusses the UK strategy to deal with preventing deaths in custody and proposes a similar approach be adopted for Canada.

Mike Larsen of York University, in *"Regulation 233/10: Counter-law and Special Police Powers at the G20,"* offers a critical assessment of security at the G20 in Toronto this past June, and discusses the use of emergency powers that result in a loss of civil liberties and threaten democratic principles. The State's use of "counter-law" enables security professionals, according to Larsen, to bypass the normal checks and balances necessary to keep authorities accountable.

Samantha Manning, of the National Crime Prevention Centre, in *"Influences Determining Citizen Involvement in Crime Prevention"* takes a look at the challenges with respect to citizen participation in community crime prevention programs and analyzes the various factors that contribute to the reticence of citizens to become involved.

Our efforts to solicit material from students have been rewarded by the submission of two papers. Yonique Brown, a law student at the University of Ottawa, offers her considerations of the Criminal Code's definition of crime in relation to racial profiling. She argues that the term "victim" should also extend to those who are at odds with the law, and where racial profiling has led to their detention or arrest. Her article is entitled *"Who is a 'Victim'? Racial Profiling and Arguments for a Broader Definition.*

The article *"Moral Panic and White Collar Crime : The Legislative Response"* by another law student, Myles McLellan from Osgoode, tackles the issue of white collar crime and questions the government's propensity to legislate more severe penal sanctions and introduce mandatory minimum sentences, thereby narrowing the scope of judicial discretion at sentencing for those found guilty of fraud. He argues that this is not the appropriate response, does nothing to come to the aid of victims, and highlights the fact that despite sensationalist media reports to the contrary, the rate of white collar crime has been in steady decline since 1991.

This issue also showcases the work of life-sentenced prisoners and community advocates at Millhaven Institution in Kingston, Ontario. Rachelle LaSalle offers a description of the purpose and work of the Millhaven Lifers' Liaison Group. Made up of students from the University of Ottawa, Carleton University and members of the outside community, and life-sentenced prisoners on the inside, this group works toward bridging the gap felt between incarcerated populations and their communities. It serves to debunk myths about prisoners and prison life; and plays a positive role in the life of these prisoners by engaging in social and educational activities at bi-monthly meetings inside the prison.

Last August 10th, Prison Justice Day was commemorated in various cities across Canada. A brief mention of these activities is presented.

We wrap up this issue with an article pertaining to the 13th edition of the International Commitee on Penal Abolition (ICOPA) Conference, held June 23-26 in Belfast, in the North of Ireland. The article discusses the state of incarceration in Ireland, particularly in the North, and the context and legacy of thirty years of conflict on the penal system. It describes the activities of the conference such as the delegates' community outing where they were invited to both sides of the Peace Wall to listen to the competing interpretations of the conflict by Irish Republican and Loyalist former combatants.

In recent months, some in the Association have been discussing the Government's favoured expression "public safety". In response, it has been decided that the Fall issue of the Justice Report should concentrate on this topic. We therefore invite our readers to contribute articles and reflections on the meaning of public safety. Hopefully this will open up a discussion around the idea, how best it should be understood, and to what ends it should be used. We look forward to your thoughts on this and other subjects.

Claire Delisle
Senior Executive Assistant

Dans ce numéro...

Dans le dernier numéro d'Actualités-Justice, nous avons traité du travail du Comité d'examen des politiques (CEP) et présenté certains extraits de correspondance entre l'ACJP et le gouvernement sur des questions de politique. Avant que ne prenne fin la 3e session parlementaire de la Chambre des communes, le CEP a continué de travailler à la rédaction de mémoires à l'intention du Comité permanent de la justice et des droits de la personne. Nous avons déposé un mémoire en réaction à l'abrogation proposée par le gouvernement de la clause de la dernière chance applicable dans le cas de détenus condamnés à perpétuité ainsi qu'un autre mémoire afférent aux restrictions proposées rendant certaines infractions inadmissibles à une réhabilitation dans le cas de crimes graves. Au moment de l'ajournement des travaux du Parlement pour l'été, le projet de loi S-6 (clause de la dernière chance) était toujours à l'étude par le Sénat.

Pour ce qui est du projet de loi C-23, *Loi modifiant la Loi sur le casier judiciaire et d'autres lois en conséquence pour des crimes* graves, on se souviendra du tollé médiatique qu'avait soulevé l'octroi d'une réhabilitation au délinquant sexuel James Graham il y a trois ans, et des spéculations à savoir si et à quel moment Karla Homolka pourrait jouir d'un pareil traitement. Ces reportages ont poussé le gouvernement à imposer un vote au dernier jour de la session parlementaire. Alors que le CEP avait proposé de maintenir les délais actuels pour l'obtention d'une réhabilitation (maintenant appelée suspension du casier), voulant contrecarrer une demande possible de suspension du casier que pourrait présenter Homolka, le gouvernement a adopté le projet de loi qui doublait les délais de trois à cinq ans dans le cas des infractions punissables sur déclaration de culpabilité et de cinq à dix ans dans le cas d'infractions punissables par voie de mise en accusation.

Bien que l'été ait été plutôt tranquille, nous avons néanmoins reçu une profusion d'articles proposés pour *Actualités-Justice* sur toute une gamme de sujets. Ce numéro vous propose donc une variété d'opinions et d'articles dont les thèmes vont de la prévention des décès en incarcération jusqu'à un compte rendu de la conférence ICOPA XIII sur l'abolition du système pénal, qui s'est tenue à Belfast en juin dernier.

L'enquêteur correctionnel du Canada, Howard Sapers, rentre tout juste du Royaume-Uni où il a rencontré des représentants de la *Ministerial Roundtable on Suicide* et du *Forum for Preventing Deaths in Custody.* Dans son article, *Incarcération plus sécuritaire : ce que le Canada peut apprendre du Royaume-Uni,* il traite de la stratégie mise en place au RU pour prévenir les décès en établissement et propose qu'on adopte une approche semblable au Canada.

Dans *Regulation 233/10: Counter-law and Special Police Powers at the G20,* Mike Larsen de l'Université York présente une évaluation critique des mesures de sécurité mises en place à l'occasion du G20 qui s'est tenu à Toronto en juin dernier et traite du recours aux pouvoirs d'urgence qui ont pour effet d'entraver l'expression des liberté civiles et de menacer les principes de la démocratie. Selon Larsen, le recours par l'État à des *"counter-laws"* [ordonnances ou lois d'exception] permet aux professionnels de la sécurité de se soustraire aux automatismes régulateurs nécessaires pour assurer que les autorités soient tenues de rendre compte.

Samantha Manning du Centre national de prévention du crime, dans *Facteurs influant sur la participation des citoyens aux programmes de prévention du crime,* se penche sur les défis que soulève la participation citoyenne aux programmes communautaires de prévention de la criminalité et analyse les divers facteurs qui contribuent à ce que les citoyens soient réticents à s'impliquer.

Nos efforts destinés à obtenir des articles d'étudiants ont porté fruit : nous en avons reçu deux. Yonique Brown, étudiante en droit à l'Université d'Ottawa, s'arrête à la définition de crime contenue dans le Code criminel du Canada en rapport avec le profilage racial. Elle avance que le terme victime devrait aussi s'appliquer aux personnes ayant des démêlés avec la justice dans les cas où le profilage racial a entraîné leur détention ou leur arrestation. L'article s'intitule *«Who is a 'Victim'? Racial Profiling and Arguments for a Broader Definition».*

L'article *Moral Panic and White Collar Crime* de Myles McLellan, un autre étudiant en droit, d'Osgoode celui-là, s'attaque à la question des criminels en col blanc (criminels à cravate) et remet en question la propension du gouvernement de légiférer en vue d'adopter des peines plus sévères et de prévoir des peines minimales, ce qui a pour effet de restreindre le pouvoir discrétionnaire des juges au moment de la détermination de la peine des personnes trouvées coupable de fraudes. Selon lui, il ne s'agit pas d'une réponse adéquate et cela ne contribue en rien à aider les victimes; il met aussi en lumière le fait que la criminalité des cols blancs a connu une baisse constante depuis 1991, en dépit de reportages médiatiques sensationnalistes laissant entendre le contraire.

Ce numéro braque aussi les projecteurs sur le travail de détenus condamnés à vie et d'intervenants communautaires à l'Établissement de Millhaven en Ontario. Rachelle La Salle nous présente une description du but et du travail du Groupe de liaison avec les condamnés à perpétuité de Millhaven. Ce groupe est constitué d'étudiants de l'Université d'Ottawa et de l'Université Carleton, de membres de la collectivité ainsi que de condamnés à perpétuité encore emprisonnés. Ce groupe vise à combler le fossé qui existe entre les détenus et leurs collectivités. Il contribue à dégonfler les mythes au sujet des détenus et de la vie en prison, et contribue de manière positive à la vie de ces détenus en les amenant à participer à des activités sociales et éducatives lors de rencontres bimensuelles à l'intérieur des murs.

Le 10 août dernier, la journée pour la justice en prison [Prison Justice Day] a été soulignée de diverses façons dans plusieurs villes canadiennes et un bref compte-rendu des activités est présenté.

Nous concluons ce numéro par un article traitant de la 13e conférence de l'*International Commitee on Penal Abolition (ICOPA),* qui s'est déroulée du 23 au 26 juin à Belfast (Irlande du Nord). Il y est question de l'état de l'incarcération en Irlande, notamment dans le Nord, ainsi que du contexte et de l'héritage laissés par trente années de conflit relatif au système pénal. On y traite aussi des activités de la conférence, telle une sortie au cours de laquelle les délégués ont été invités des deux côtés du *Peace Wall* (Mur de la paix) où ils ont peu prendre connaissance d'interprétations concurrentes du conflit exposé par d'anciens combattants républicains et loyalistes de l'Irlande.

Depuis quelques mois, certains membres de l'Association discutent de l'expression préférée du gouvernement : *sécurité publique.* Conséquemment, on a décidé que le numéro d'automne d'*Actualités-Justice* mettrait l'accent sur ce sujet. Nous invitons donc nos lecteurs à nous soumettre des articles dans lesquels ils nous feront part de leurs réflexions sur le sens qu'ils donnent à *sécurité publique.* Espérons que cela contribuera à susciter une discussion sur cette notion, sur la meilleure façon de la concevoir ainsi que sur les fins auxquelles elle devrait servir. Nous attendrons impatiemment de connaître vos vues sur ce sujet et d'autres.

Claire Delisle
adjointe principale

Safer Custody: What Canada Can Learn from the United Kingdom

By Howard Sapers

Correctional Investigator of Canada

Preventing Deaths in Canadian Custody

The prevention of deaths in custody is a challenge faced by all correctional systems. In Canada, there has been a renewed focus on preventing deaths in custody following a number of high profile incidents and reports. Some of the recent reports from the Office of the Correctional Investigator (OCI) include: ***Deaths in Custody Study (2007), Report on the Circumstances Surrounding the Death of a Federal Inmate: A Failure to Respond (2008),*** and ***A Preventable Death (2008).***

In these reports, the OCI, as the ombudsman for federal offenders, raised concerns with the Correctional Service of Canada's (CSC) capacity to prevent deaths in custody. The OCI noted several longstanding issues and oft-repeated recommendations for change. One key theme that ties many of the reports and recommendations together is the need to share best practices and sustain focus on the lessons learned.

Since the tragic death of Ashley Smith in October 2007, the CSC has engaged in a number of activities focused on reducing deaths in custody. Some of the significant developments by CSC include: staff training on suicide prevention; distribution of Automatic External Defibrillators (AED) to all institutions for use in medical emergencies; increased counts/ patrols during evening hours; and structural assessments to identify potential hanging points. In addition to these important initiatives, CSC has convened two external review boards: One to examine long-term segregation for offenders with mental health concerns, and the second to review the offender complaints and grievance process.

In spite of this activity, in the period between Ashley Smith's death and today, another 130 offenders have died in federal correctional custody. Unfortunately, many of the same accountability, governance and performance issues which failed young Ashley have also been raised as concerns in the investigations into many of these deaths.

Preventing deaths in custody requires the cooperation of all sectors of the correctional organization and cannot be achieved through individuals acting in isolation of one another or initiatives being implemented in a piecemeal fashion. Internal investigations or external reviews of factors contributing to deaths in custody have not resulted in the sustained focus, monitoring mechanisms, and accountability measures necessary to ensure that lessons learned are implemented consistently across all sectors of correctional operations.

The prevention of in-custody deaths is not an exclusive concern of the CSC. Provincial correctional authorities, police agencies and secure psychiatric facilities all share the need for safer custody. Recognizing the common need and the potential for shared learning, the OCI, together with the Canadian Police

Research Centre have sponsored a series of exploratory meetings to discuss the potential for a national forum on preventing deaths in custody. The forum would involve all stakeholders who have an interest in, or mandate for safe custody. The idea for a Canadian forum was inspired by recent experience in the United Kingdom.

Preventing Deaths in Custody in the United Kingdom

In the United Kingdom, the prevention of deaths in custody is the responsibility of not only the custodial agencies, but also a Ministerial Council on Deaths in Custody and the Prison and Probation Ombudsman. The Prison and Probation ombudsman is appointed by the Secretary State for Justice and is an ombudsman for prisoners, individuals on probation, and immigrant detainees held at immigration removal centres. In addition to investigating individual and systemic complaints, the Prison and Probation Ombudsman is now required by law to investigate and report on all fatal incidents in custody.

Prior to 2009, cross-sector efforts to prevent deaths in custody were the responsibility of the Ministerial Roundtable on Suicide and the Forum for Preventing Deaths in Custody. The Roundtable on Suicide was established by the British Parliament and chaired by a Minister. The Ministerial Roundtable was concerned with suicide and self-harming in prisons, Safe Training Centres, immigration detention facilities and approved probation premises. The Forum for Preventing Deaths in Custody was broader in scope and concerned with all causes of death in all forms of state custody, including: police detention centres and secure psychiatric facilities. Membership was not limited to relevant operational services, and the Forum did not have formal links to Ministers.

In 2008, the Safer Custody Group of the Prison Service commissioned a review of the Ministerial Roundtable on Suicide and the Forum for Preventing Deaths in Custody. The resulting report recommended a new, more permanent structure to monitor and prevent deaths in custody. The new organization would be called the Ministerial Council on Deaths in Custody and would be comprised of the Department of Health, Ministry of Justice – National Offender Management Service (NOMS), and the Home Office. The former Forum would become the Independent Advisory Panel on Deaths in Custody (IAP), comprised of external experts and supported by a Stakeholder and Practitioner Group.

Today, the Ministerial Council incorporates senior decision-makers from Health, Justice, the Home Office, practitioners in the field, and knowledge experts to facilitate cross-sector learning and sharing of lessons learned. The Council's philosophical approach to deaths in custody as a part of the larger issue of offender safety is greatly influenced by the Ministry of Justice's National Offender Management Service (NOMS).

The Independent Advisory Panel (IAP) provides independent advice and expertise to the Ministerial Council: advising on policy and best practices across sectors, making recommendations to the heads of key agencies, and conducting / disseminating research and lessons learned from deaths in custody. The IAP draws knowledge from a variety of custodial experiences and settings; linking research to policy and practice. Together, the Ministerial Council on Deaths in Custody and the IAP contribute to the continued and sustained reduction in the incidents of deaths in custody in England and Wales.

In the United Kingdom, deaths in custody are seen as a multi-sector concern. Through the interaction of the Ministry of Health, Home Office, and IAP, as well as the Ministry of Justice's National Offender Management Service, the issue of deaths in custody has become a central part of the larger issue of offender safety.

What Does this mean for Canada?

The United Kingdom's approach to offender safety and deaths in custody may hold some lessons for Canada. One of the major shortcomings of the Canadian response to deaths in custody is the lack of integration between sectors and the consistent application of lessons learned. For example, while there have been great improvements in the CSC's recognition of offender mental health needs and increased attention paid to suicide prevention, these issues often remain secondary to security driven considerations. Moving offenders between correctional and health care settings can be fraught with difficulty and accessing ongoing treatment in the community upon release continues to be problematic. These ongoing tensions within correctional centres and between service providing organizations have hampered information sharing and

integration of services. These issues would be addressed by a similar approach to the one taken in the U.K.

Monitoring and evaluation of, and sustained attention to, improvements implemented as a result of an in-custody death review are still not as robust in Canada as they need to be. Once again, the recent U.K. experience indicates that combined political, organizational and public interest may create the focus necessary to bring about more lasting improvements. Promising activities undertaken by the CSC are often initiated without mechanisms in place to ensure that they are implemented consistently or are afforded permanent organizational focus. An external multi-sector advisory and review body may assist in bringing appropriate attention to this need.

It is worthwhile to consider the experiences of the United Kingdom as Canada moves forward with efforts to reduce the number of deaths in custody. It is important to take into account some of the benefits and strengths associated with the U.K. model, including: a national, permanent advisory body focused on deaths in custody and high level government participation ensuring a more global perspective on offender safety.

Incarcération plus sécuritaire : ce que le Canada peut apprendre du Royaume-Uni

Par Howard Sapers

Enquêteur correctionnel du Canada

La prévention des décès en établissement au Canada

Tous les systèmes correctionnels doivent affronter les défis de la prévention des décès en établissement. Au Canada, cette question a fait l'objet d'un intérêt renouvelé à la suite d'un certain nombre de rapports et d'incidents notoires. Parmi les rapports publiés par le Bureau de l'enquêteur correctionnel (BEC), on trouve : ***Étude sur les décès en établissement (2007), Rapport sur les circonstances entourant le décès d'un détenu sous responsabilité fédérale – À défaut de répondre (2008),*** et ***Une mort évitable (2008).***

Dans ces rapports, le BEC, à titre d'ombudsman des délinquants sous responsabilité fédérale, soulève des préoccupations au sujet de la capacité de Service correctionnel du Canada (SCC) de prévenir les décès en établissement. Le BEC a remarqué plusieurs problèmes de longue date et des recommandations de changement souvent répétées. La nécessité de mettre en commun les pratiques exemplaires et de rester attentifs aux leçons apprises est un thème clé qui revient dans de nombreux rapports et recommandations.

Depuis le décès tragique d'Ashley Smith en octobre 2007, le SCC a entrepris des activités visant à diminuer le nombre de décès en établissement. Voici certaines des avancées importantes du SCC : la formation du personnel sur la prévention

du suicide; la distribution, dans tous les établissements, de défibrillateurs externes automatisés (DEA) en cas d'urgence médicale; l'augmentation des dénombrements/rondes en soirée; et l'évaluation des structures pour repérer d'éventuels points de pendaison. En plus de ces initiatives importantes, le SCC a réuni deux comités externes d'examen : le premier, pour examiner les cas de délinquants atteints de troubles mentaux ayant été placés en isolement de longue durée, et le second, pour examiner le processus de plaintes et de griefs des délinquants.

Malgré ces initiatives, depuis le décès d'Ashley Smith, 130 délinquants ont trouvé la mort dans des établissements fédéraux. Malheureusement, beaucoup des problèmes liés à la responsabilisation, à la gouvernance et au rendement qui ont été négligés dans le cas de la jeune Ashley ont aussi fait l'objet de préoccupations dans bien des enquêtes menées sur ces décès.

La prévention des décès en établissement exige la collaboration de tous les secteurs du Service correctionnel et ne peut être réalisée en agissant chacun pour soi ou en mettant des initiatives en œuvre de façon fragmentaire. Les enquêtes internes ou les examens externes sur les facteurs qui contribuent aux décès en établissement n'ont pas permis d'obtenir l'attention constante, les mécanismes de surveillance et les mesures de responsabilisation nécessaires pour s'assurer que les leçons apprises sont appliquées de façon uniforme dans tous les secteurs des opérations correctionnelles.

La prévention des décès en établissement ne concerne pas exclusivement le SCC. Les autorités correctionnelles provinciales, les services de police et les établissements psychiatriques sécuritaires aspirent tous à l'incarcération sécuritaire. Reconnaissant ce désir commun et les possibilités de mise en commun des connaissances, le BEC, en collaboration avec le Centre canadien de recherches policières, a parrainé une série de rencontres exploratoires pour discuter de la perspective d'un forum national sur la prévention des décès en établissement. Le forum mobiliserait tous les intervenants qui ont pour mandat l'incarcération sécuritaire ou qui s'y intéressent. L'idée d'un forum canadien a été inspirée de ce qui s'est fait récemment au Royaume-Uni.

La prévention des décès en établissement au Royaume-Uni

Au Royaume-Uni, la prévention des décès en établissement ne relève pas seulement des organismes de détention, mais aussi d'un conseil ministériel sur les décès en établissement (Ministerial Council on Deaths in Custody) et de l'ombudsman des prisons et de la probation. L'ombudsman est nommé par le secrétaire d'État à la Justice et il s'occupe des prisonniers, des délinquants en probation, et des immigrants détenus dans des centres de détention de l'immigration. En plus d'étudier les plaintes individuelles et systémiques, l'ombudsman des prisons et de la probation est maintenant tenu par la loi de mener des enquêtes et de rédiger des rapports sur tous les incidents mortels survenus en établissement.

Avant 2009, les efforts intersectoriels pour prévenir les décès en établissement relevaient de la table ronde ministérielle sur le suicide et du forum axé sur la prévention des décès en établissement. La table ronde sur le suicide avait été créée par le Parlement britannique et était présidée par un ministre. Elle se préoccupait du suicide et de l'automutilation dans les prisons, les centres de formation sans risque, les centres de détention de l'immigration et les locaux homologués de probation. La portée du forum axé sur la prévention des décès en établissement était plus vaste. Il s'intéressait à toutes les causes de décès survenant sous tous les types de garde de l'État, dont les centres de détention de la police et les établissements psychiatriques sécuritaires. Ses membres ne provenaient pas uniquement des services opérationnels pertinents et il n'existait pas de lien formel entre le forum et les ministres.

En 2008, le groupe pour une incarcération sécuritaire (Safer Custody Group) du service pénitentiaire a mandaté la tenue d'un examen de la table ronde ministérielle sur le suicide et du forum axé sur la prévention des décès en établissement. Le rapport découlant de cet examen recommandait une nouvelle structure qui serait permanente et permettrait de surveiller et de prévenir les décès en établissement. Le nouvel organisme serait nommé conseil ministériel sur les décès en établissement et comprendrait le ministère de la Santé, le service national de gestion des délinquants (National Offender Management Service) du ministère de la Justice, et le ministère de l'Intérieur (Home Office). L'ancien forum deviendrait le comité consultatif indépendant sur les décès en établissement (Independent Advisory Panel on Deaths in Custody) et réunirait des experts externes, aidés par un groupe d'intervenants et de praticiens.

Aujourd'hui, le conseil ministériel comprend des hauts fonctionnaires des ministères de la Santé, de la Justice et de l'Intérieur, des praticiens du domaine, et des experts en la matière pour faciliter l'apprentissage intersectoriel et la transmission des leçons apprises. Cette nouvelle manière d'envisager les décès en établissement, comme faisant partie du problème plus vaste de la sécurité des délinquants, est grandement influencée par le service national de gestion des délinquants du ministère de la Justice.

Le comité consultatif indépendant fournit une expertise et des conseils indépendants au conseil ministériel : il conseille sur les politiques et les pratiques exemplaires intersectorielles, fait des recommandations aux dirigeants des organismes clés, effectue et diffuse des recherches et répand les leçons apprises à la suite des décès en établissement. Le comité consultatif indépendant tire ses connaissances de différentes expériences et situations de détention et allie la recherche aux politiques et à la pratique. Ensemble, le conseil ministériel sur les décès en établissement et le comité consultatif indépendant contribuent au maintien de la réduction des décès en établissement en Angleterre et au Pays de Galles.

Au Royaume-Uni, les décès en établissement sont perçus comme une préoccupation multisectorielle. Grâce à l'interaction entre le ministère de la Santé, le ministère de l'Intérieur, le comité consultatif indépendant et le service national de gestion des délinquants du ministère de la Justice, la question des décès en établissement fait maintenant partie intégrante de la grande question de la sécurité des délinquants.

Qu'est-ce que cela signifie pour le Canada?

Le Canada pourrait tirer des leçons de l'approche du Royaume-Uni envers la sécurité des délinquants et les décès en établissement. Deux des lacunes importantes de l'intervention du Canada en ce qui concerne les décès en établissement est l'intégration entre les secteurs et l'application continue des leçons apprises. Par exemple, même si le SCC a fait de grands progrès pour ce qui est de reconnaître les besoins des délinquants ayant des problèmes de santé mentale et d'accroître l'attention portée à la prévention du suicide, ces questions demeurent souvent secondaires dans les dispositions relatives à la sécurité. Déplacer les délinquants entre des milieux correctionnels et des établissements de santé peut comporter bien des difficultés et l'accès à un traitement continu dans la collectivité après avoir été libéré continue de poser problème. Ces tensions constantes au sein des centres correctionnels et entre les fournisseurs de services ont gêné la mise en commun des renseignements et l'intégration des services. Ces problèmes ont partiellement été réglés par l'approche adoptée par le Royaume-Uni.

La surveillance et l'évaluation des améliorations apportées à la suite d'un examen sur les décès en établissement, ainsi que l'attention soutenue qui leur est accordée, ne sont toujours pas aussi rigoureuses qu'elles devraient l'être. Encore une fois, l'expérience récente du Royaume-Uni montre que la combinaison des intérêts politiques, organisationnels et publics peut engendrer l'attention nécessaire pour provoquer davantage d'améliorations durables. Les activités prometteuses du SCC sont souvent entreprises sans qu'aucun mécanisme ne soit mis en place pour assurer qu'elles sont exécutées de manière uniforme ou que l'organisme concerné leur consacre des efforts permanents. Un comité externe de consultation et d'examen multisectoriel pourrait permettre de combler cette lacune.

Dans ses efforts pour réduire le nombre de décès en établissement, le Canada tirerait avantage à tenir compte des expériences du Royaume-Uni. Il est important de considérer les avantages et les forces associés au modèle du Royaume-Uni, notamment un comité consultatif national permanent axé sur les décès en établissement et la participation de hauts fonctionnaires assurant une perspective globale de la sécurité des délinquants.

Regulation 233/10: Counter-law and Special Police Powers at the G20

by Mike Larsen,

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Downtown Toronto was transformed quite effectively into an armed camp, with walls patrolled by a temporary paramilitary police garrison drawn from across the country. Members of this (in)security force designated as 'guards' were given special powers to arrest and detain both residents and visitors to Toronto who, being near the G20 security zone, elect not to identify themselves when challenged by police.

Put differently, downtown Toronto was currently subject to a state of exception, where security forces were been empowered to *circumvent otherwise-protected rights,* a state of affairs that has been described by government officials as a necessary contingency given the extraordinary security situation. Reasonable suspicion of some kind of wrongdoing is unnecessary for these powers to be exercised – simply refusing to comply with a request for "papers, please" is sufficient to land one in a temporary detention cage.

All of this is, we are assured, purely temporary.

The announcement from the Toronto Police Service of the new police powers (which also denied that they were at all new) came unexpectedly, after they had already been used to detain G20 protester Dave Vasey. The secretive implementation and use of this new power prompted criticism from many corners, including an editorial from the Toronto Star calling the situation "outrageous" and an editorial from the Ottawa Citizen decrying the "arbitrary harassment of passers-by" and highlighting the disturbing lack of public consultation or debate.

G20 police 'guards' did not acquire their powers through the clandestine passage of a wholly new piece of legislation, or through the formal invocation of a state of emergency and concomitant suspension of civil liberties (as per the old War Measures Act). Instead, the powers were obtained through the creative extension of existing law – in this case Ontario's *Public Works Protection Act* R.S.O. 1990, Chapter P.55.

This maneuver, which is rightly considered anti-democratic and underhanded, closely resembles what Canadian criminologist Richard Ericson described in his 2007 book, "Crime in an Insecure World" as 'counter-law' or the use of 'laws against law', whereby "new laws are enacted and new uses of existing law are invented to erode or eliminate traditional principles, standards, and procedures of criminal law that get in the way of preempting imagined sources of harm" (Ericson, 2007: 24). I have found the concept of counter-law to be an invaluable

resource for making sense of new forms of surveillance and control which are characterized by a precautionary, pre-emptive focus and a fluid and ambiguous legal form.

Counter-laws tend to be either ad-hoc and temporary 'solutions' to particular perceived security problems, as is the case with the G-20 force's manipulation of the Public Works Protection Act, or open-ended frameworks where administrative law is pressed into service as pseudo-criminal national security law (as is the case with the Canadian security certificate regime). This approach is attractive to (in)security professionals, as it sidesteps the messy checks and balances associated with the drafting and passage of new criminal legislation, and tends to substitute the due process and reasonableness standards of criminal law with the considerably diminished standards of administrative law. This also makes counter-law difficult to oppose, as it involves the reinterpretation and repurposing of existing law (in a sense, the securitization of law), rather than a traditional legislative process.

In this instance, security managers wanted expanded powers to identity challenge, arrest, and detain, as well as a reduced threshold for action. Attempting to obtain these powers through the usual channels would have been difficult, if not impossible (they fly in the face of the Charter), and certainly a source of extreme controversy. The solution was found in s. 2.(1) of the *Public Works Protection Act,* which allows a number of Provincial and Municipal officials to appoint 'guards' with special powers in order to secure 'public works'. The definition of 'public works' is open-ended, and the Lieutenant Governor in Council has the power to extend this designation to any building or place. 'Guards' enjoy peace officer status and, per s.3 of the *Act:*

A guard or peace officer,

(a) may require any person entering or attempting to enter any public work or any approach thereto to furnish his or her name and address, to identify himself or herself and to state the purpose for which he or she desires to enter the public work, in writing or otherwise;

(b) may search, without warrant, any person entering or attempting to enter a public work or a vehicle in the charge or under the control of any such person or which has recently been or is suspected of having been in the charge or under the control of any such person or in which any such person is a passenger; and

(c) may refuse permission to any person to enter a public work and use such force as is necessary to prevent any such person from so entering. R.S.O. 1990, c. P.55, s. 3.

Further, per s.5,

(1) Every person who neglects or refuses to comply with a request or direction made under this Act by a guard or peace officer, and every person found upon a public work or any approach thereto without lawful authority, the proof whereof lies on him or her, is guilty of an offence and on conviction is liable to a fine of not more than $500 or to imprisonment for a term of not more than two months, or to both.

Arrest

(2) A guard or peace officer may arrest, without warrant, any person who neglects or refuses to comply with a request or direction of a guard or peace officer, or who is found upon or attempting to enter a public work without lawful authority. R.S.O. 1990, c. P.55, s. 5.

On June 2, the Ontario cabinet quietly issued a regulation (233/10) that designated massive swathes of downtown Toronto – including sidewalks – as 'public works', resulting in the creation of a five metre conter-legal perimeter around the physical perimeter of the G-20 security zone, where troublesome civil rights and standard rules of procedure have been circumvented.

Certainly, Regulation 233/10 and the counter-legal use of the Public Works Protection Act as an impromptu 'G20 Security Zone Enforcement Act' will be challenged in the courts (long after the powers have been used to coerce, arrest, and detain, of course). Perhaps the Regulation will be found to be an infringement of Charter rights. Perhaps it will instead be found to be an application of law that toes the line without constituting a full breach. Regardless of the outcome of such a challenge, the political maneuver that gave rise to Regulation 233/10 warrants scrutiny and condemnation. This sort of cynical redeployment of existing laws to fit the whims of security managers is disingenuous and, as Ericson argued, it results in the "undermining of law as a democratic institution" (2007: pp. 208-209).

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Influences Determining Citizen Involvement in Crime Prevention

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Many community crime prevention programs endeavour to facilitate citizen participation in the protection of their community. Scholars suggest that functional community crime prevention initiatives work to change those social conditions within the community that have been identified as criminogenic (Hope, 1995: 21). To do this, community crime prevention encourages citizens to develop a working relationship with community partners and stakeholders – especially police – so they become "co-producers" of their own safety (Pattavina, Byrne, & Garcia, 2006: 205). Thus, community crime prevention necessitates, among other things, citizen involvement and engagement. Examples of such programs can include Neighbourhood Watch and various community policing programs. It is hoped that such community crime prevention will bring various members of the neighbourhood – with different interests and priorities – together to reduce and prevent crime. However, it has been suggested by some observers that, overall, attempts to reduce crime through community crime prevention have been unsuccessful (Hope, 1995: 23).

One explanation for this limited success is understood as citizens' frequent hesitancy to participate in the programming. This article will present five influences that can impact citizen participation versus non-participation in community crime prevention programs. These influences include: neighbourhood crime rates and corresponding risk levels, social cohesion and homogeneity, citizen relationships with police, previous involvement in community-based organizations, and structural constraints that may restrict citizen participation. This discussion, however, must be prefaced with the acknowledgement that different studies examining this subject matter have identified varying results depending on both the individual population and the surrounding environment.

The first influence to be examined is neighbourhood risk levels and the individual's corresponding fear of crime. Scholars often worry that it is the communities who could benefit the most from crime prevention that are the most hesitant or unlikely to participate because of their fear of crime, for example (Schneider, 2000: 34). Citizens' individual experiences with crime have been concretely linked to one's participation in crime prevention (Lavrakas & Herz, 1982: 480). Lavrakas and Herz (1982) go on to suggest that personal experiences of victimization, fear of crime, perceptions of the crime situation in one's neighbourhood, and statistical crime rates may all play a role in determining one's participation level (p. 480). This explanation is logical in that it assumes that if one is more privy to crime and, consequently, fearful of the potential for legitimate victimization, then simple community crime prevention programs – like Neighbourhood Watch – may not reduce that fear enough to promote or warrant their participation (Grinc, 1994: 448).

As well, in high-crime areas, participation in community crime prevention programs may be seen as risky behaviour because of potential retaliation from offenders in the community (Grinc, 1994: 447). Community crime prevention programs that facilitate an open relationship between the community and the police in the reporting of drug crimes, for example, may face backlash from the drug dealers/users within the area.

Furthermore, neighbourhood demographics such as income levels, ethnicities, education levels and resident mobility have also been found to influence overall participation in crime prevention programming (Bennet, 1989: 209; Lavrakas & Herz, 1982: 482). Because of specific demographic characteristics, "these urban areas may experience a high degree of social disorganization characterized by social mobility which results in mutual distrust, hostility, and antipathy between newcomers and long-term residents" (Farkas & Jones, 2007: 296). This kind of environment facilitates reluctance to become involved in crime prevention programs.

Resulting from demographical factors like income and neighbourhood ethnicities is the second factor: social cohesion and social bonds. The importance of a cohesive, well-organized community to the encouragement of citizen participation is well documented (Pattavina, Byrne, & Garcia, 2000: 213). Farkas and Jones (2007) suggest, "there is a growing recognition that stronger community cohesion and social organization in a neighbourhood will result in stronger informal social control and ultimately affect criminal activity" (p. 296). Community crime prevention programs, in their most basic form, dictate that community participants are capable of organizing themselves and reaching consensuses. Heterogeneous, disorganized communities are, thus, less likely to foster citizen participation in crime prevention programming.

Linked to the concept of social cohesion, is the possibility of language barriers between community members. Individuals who may already feel isolated from their community due to a language barrier are unlikely to feel comfortable participating in a program that does not necessarily cater to their background or capabilities. These language barriers might inhibit cohesive and inclusive programming (Schneider, 2000: 41). Thus, community outreach by the prevention program should ensure that they are adequately prepared to include all members of the community.

A third factor capable of potentially influencing citizen participation in community crime prevention concerns the individual's perception of and relationship with the police. It is largely assumed that most individuals desire a closer relationship with the police to combat and prevent crime. However, in certain environments, especially those detailed earlier, this may not necessarily be the case (Grinc, 1994: 450). Some communities have witnessed a long-standing, perpetually poor relationship with the police due to a myriad of reasons including, for example, racial targeting. This enduring conflict between the police and marginalized community members will take time to be resolved; however, it is necessary if the citizens are to participate in the co-production of their safety that is required from community crime prevention.

This problem is further intensified when dealing with new immigrants who come from a country where the police are corrupt, repressive and violent. When citizens have been raised to be fearful and wary of the police that mentality will not necessarily shift into a more "Western" perception of the police overnight. Those feelings are deeply ingrained within the mindset of these individuals and, consequently, make them less likely to participate in crime prevention activities organized by the police. Grinc (1994) citing Manning (1988) suggests, "so long as the police exercise violence in the name of the state, they will be despised by many in poor communities and will always represent the potential for violence to all…community residents" (p. 450). Thus, participation in community crime prevention programs which incorporate the police, by those citizens wary of police officers, is unlikely.

A fourth factor that scholars indicate as potentially influencing citizen participation in community crime prevention programs is one's previous participation in any community-based organizations – related to crime prevention, or not. Lavrakas and Herz (1982) cite findings that indicate that those citizens who are involved with local crime prevention, are more likely to have previously contributed to other community-based organizations as well (p. 480-1). It was found

that over three-quarters of the participants at the studied crime prevention meeting were linked to other community organizations (Lavrakas & Herz, 1982: 494). Thus, in considering what motivates an individual to participate in a given community crime prevention program, one should also consider any potential partnerships with previously established community organizations (Lavrakas & Herz, 1982: 496).

Finally, structural issues and logistical constraints may influence citizens' participation in such community crime prevention programs. While the previous factors indicate various influences that may explain a lack of citizen participation; community crime prevention programs can contribute to this lack of participation by not having sufficient resources, and lacking the necessary professional knowledge, for example (Schneider, 2000: 39). Available resources can play a significant role in determining citizen participation in community crime prevention. For example, if the program coordinators or implementers do not have the financial resources to properly promote and create awareness of the program, then naturally, citizens will likely be disinclined to participate. Likewise, if the program does not have a sufficient number of volunteers necessary to run the program, the disorganization and instability might deter potential citizens from participating.

Thus, there are several different factors that can influence one's participation in community crime prevention. And while it may prove difficult for policy-makers and program leaders alike to incorporate all these potential influences into a crime prevention program, it is important to recognize and be aware of them. Although there is a general consensus that those most in need of community crime prevention programming are those least likely to participate, there are, as has been shown, both challenges and opportunities associated with their success in local communities.

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Facteurs influant sur la participation des citoyens aux programmes de prévention du crime

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Bon nombre de programmes communautaires de prévention du crime visent à inciter les citoyens à contribuer à la protection de leur collectivité. Des chercheurs affirment que les initiatives communautaires de prévention du crime d'ordre fonctionnel visent à modifier les conditions sociales considérées comme criminogènes dans la collectivité (Hope, 1995, p. 21). Pour ce faire, les programmes communautaires de prévention du crime cherchent à inciter les citoyens à établir de bonnes relations avec les partenaires et les intervenants de la collectivité – particulièrement les policiers – afin qu'ils deviennent des « coproducteurs » de leur propre sécurité (Pattavina, Byrne et Garcia, 2006, p. 205). Ainsi, les programmes communautaires de prévention du crime nécessitent, entre autres, la participation et l'engagement des citoyens. Le programme Surveillance de quartier ainsi que différents programmes de police communautaire constituent des exemples de programmes communautaires de prévention du crime. Ces programmes visent à réunir différents membres de la collectivité – ayant différents intérêts et différentes priorités – en vue de réduire et de prévenir la criminalité. Toutefois, certains chercheurs affirment que, dans l'ensemble, les tentatives pour réduire la criminalité à l'aide de programmes communautaires de prévention du crime se sont révélées infructueuses (Hope, 1995, p. 23).

Ce succès mitigé s'expliquerait notamment par le fait que les citoyens hésitent souvent à participer à ces programmes. Le présent article traitera de cinq facteurs pouvant influer sur la participation ou la non-participation des citoyens aux programmes communautaires de prévention du crime. Ces facteurs sont : les taux de criminalité dans les quartiers et les niveaux de risque connexes, la cohésion et l'homogénéité sociales, les relations qu'entretiennent les citoyens avec les policiers, le fait d'avoir déjà participé à des activités d'organismes communautaires ainsi que les contraintes structurelles pouvant limiter la participation des citoyens. Toutefois, avant de commencer cette analyse, il faut préciser que diverses études portant sur ce sujet ont fait état de résultats différents, lesquels variaient selon la population et le milieu ciblés.

Le premier facteur à l'étude concerne les niveaux de risque des quartiers et la peur du crime qui y est associée chez les citoyens. Les chercheurs se préoccupent souvent du fait que les citoyens qui profiteraient le plus de programmes de prévention du crime sont ceux qui hésitent le plus à y participer ou qui sont les moins susceptibles d'y prendre part en raison de leurs craintes par rapport au crime, par exemple (Schneider, 2000, p. 34). Un lien concret a été établi entre les expériences des citoyens relativement au crime et leur participation aux programmes de prévention du crime (Lavrakas et Herz, 1982, p. 480). Lavrakas et Herz (1982) affirment aussi que les expériences personnelles de victimisation, la peur du crime, l'opinion d'une personne relativement à la criminalité dans son quartier et les taux de criminalité selon les statistiques peuvent tous influer sur le niveau de participation (p. 480). Cette explication est logique, car elle repose sur l'hypothèse suivante : si une personne est au courant des faits liés à la criminalité et qu'elle a donc peur d'être éventuellement victimisée, il se peut que les programmes communautaires de prévention du crime de base – comme le programme Surveillance de quartier – n'aient pas comme effet de calmer suffisamment sa peur pour favoriser ou garantir sa participation à ces programmes (Grinc, 1994, p. 448).

En outre, dans les secteurs où le taux de criminalité est élevé, la participation à des programmes communautaires de prévention du crime peut être considérée comme une activité risquée en raison des représailles que pourraient exercer les délinquants de la collectivité (Grinc, 1994, p. 447). Les programmes communautaires de prévention du crime qui favorisent une relation ouverte entre les membres de la collectivité et la police pour ce qui est du signalement d'infractions liées aux drogues, par exemple, peuvent susciter une réaction très négative chez les trafiquants et les consommateurs de drogue locaux.

De plus, des chercheurs ont constaté que certaines variables démographiques des quartiers, comme le niveau de revenu, la diversité ethnique, le niveau de scolarité et la mobilité résidentielle, ont également une influence sur la participation globale des citoyens aux programmes de prévention du crime (Bennet, 1989, p. 209; Lavrakas et Herz, 1982, p. 482). En raison de certaines caractéristiques démographiques, [traduction] « ces milieux urbains peuvent être aux prises avec un niveau élevé de désorganisation sociale qui se caractérise par la mobilité sociale, ce qui entraîne de la méfiance, de l'hostilité et de l'antipathie entre les nouveaux venus et les résidants de longue date » (Farkas et Jones, 2007, p. 296). Ce type de milieu peut amener les citoyens à ne pas vouloir participer aux programmes de prévention du crime.

Le deuxième facteur, à savoir la cohésion sociale et les liens sociaux, découle de facteurs démographiques comme le niveau de revenu et la diversité ethnique dans les quartiers. Il est bien établi que la cohésion et le niveau de structure des collectivités constituent d'importants éléments qui favorisent la participation des citoyens (Pattavina, Byrne et Garcia, 2000, p. 213). D'après Farkas et Jones (2007), [traduction] « on reconnaît de plus en plus que, dans les quartiers, l'existence d'une bonne cohésion sociale et d'une organisation sociale structurée se traduit par l'établissement de mécanismes de contrôle social informel plus efficaces et, au bout du compte, par des répercussions sur les activités criminelles » (p. 296). Les programmes communautaires de prévention du crime, dans leur forme la plus simple, présupposent que les participants de la collectivité sont capables de s'organiser et de parvenir à un consensus. Par conséquent, les collectivités hétérogènes et désorganisées sont moins susceptibles d'inciter les citoyens à participer à des programmes de prévention du crime.

Un élément lié au concept de cohésion sociale est la possibilité qu'il y ait des barrières linguistiques entre les membres de la collectivité. Les personnes qui peuvent se sentir déjà isolées dans leur collectivité en raison de barrières linguistiques ne sont pas susceptibles d'être à l'aise à l'idée de participer à un programme qui n'est pas nécessairement adapté à leurs origines ou à leurs capacités. En outre, ces barrières linguistiques peuvent nuire à l'établissement de programmes cohésifs et inclusifs (Schneider, 2000, p. 41). Par conséquent, les travailleurs de proximité responsables des programmes de prévention devraient s'assurer qu'ils sont suffisamment préparés pour inclure tous les membres de la collectivité.

L'opinion qu'ont les citoyens au sujet des policiers et les relations qu'ils entretiennent avec eux constituent le troisième facteur

pouvant influer sur leur participation aux programmes communautaires de prévention du crime. En général, on s'entend pour dire que la plupart des citoyens souhaitent établir une étroite relation avec les policiers pour combattre et prévenir le crime. Toutefois, ce postulat ne s'applique pas dans certains milieux, dont ceux qui ont été décrits précédemment (Grinc, 1994, p. 450). Dans certaines collectivités, en effet, les citoyens entretiennent depuis longtemps des relations conflictuelles avec les policiers, et ce, pour de multiples raisons, telles que le profilage racial, par exemple. Il faudra beaucoup de temps pour résoudre ce conflit de longue date entre les policiers et les membres marginaux des collectivités; toutefois, il faut le résoudre pour permettre aux citoyens de participer en tant que coproducteurs de leur propre sécurité, comme le prévoient les programmes communautaires de prévention du crime.

Ce problème est d'autant plus important lorsqu'il est question de nouveaux immigrants qui proviennent d'un pays où les policiers sont corrompus, répressifs et violents. Lorsque des citoyens ont appris à craindre la police, cette mentalité ne laissera pas nécessairement place à une opinion plus « occidentale » de la police du jour au lendemain. En effet, cette mentalité est ancrée solidement dans leur esprit. Par conséquent, ils sont moins portés à participer à des activités de prévention du crime organisées par les policiers. En citant Manning (1988), Grinc (1994) affirme que [traduction] « tant et aussi longtemps que les policiers useront de violence au nom de l'État, ils seront méprisés par de nombreux citoyens vivant dans les collectivités défavorisées et seront toujours considérés par les citoyens comme des personnes susceptibles de recourir à la violence » (p. 450). Ainsi, il est peu probable que ces citoyens prennent part à des programmes communautaires de prévention du crime auxquels participent les policiers.

Le fait d'avoir déjà participé à des activités d'organismes communautaires – qu'elles soient ou non liées à la prévention du crime – représente le quatrième facteur qui, d'après les chercheurs, peut influer sur la participation des citoyens aux programmes communautaires de prévention du crime. Lavrakas et Herz (1982) font état de résultats qui révèlent que les citoyens qui participent à des programmes locaux de prévention du crime sont plus susceptibles d'avoir déjà participé à d'autres activités d'organismes communautaires (p. 480-481). En outre, ils ont constaté, lors de la réunion sur la prévention du crime à l'étude, que plus de trois quarts des participants présents étaient liés à d'autres organismes communautaires (Lavrakas et Herz, 1982, p. 494). Ainsi, au moment d'examiner ce qui motive les citoyens à participer à un programme communautaire de prévention du crime, il faut aussi tenir compte de la possibilité d'établir des partenariats avec des organismes communautaires qui existent déjà (Lavrakas et Herz, 1982, p. 496).

Finalement, les problèmes structurels et les contraintes logistiques peuvent influer sur la participation des citoyens aux programmes communautaires de prévention du crime. Les facteurs mentionnés précédemment font état de différentes influences pouvant expliquer la faible participation des citoyens. Par contre, les programmes communautaires de prévention du crime peuvent également contribuer à cette faible participation s'il n'y a pas suffisamment de ressources qui y sont affectées ou si les personnes qui s'en occupent ne possèdent pas les connaissances professionnelles requises, par exemple (Schneider, 2000, p. 39). La quantité de ressources disponibles représente un facteur qui peut influer grandement sur la participation des citoyens aux programmes communautaires de prévention du crime. Par exemple, si les personnes chargées de coordonner ou de mettre en œuvre un programme n'ont pas assez de ressources financières pour faire la promotion de ce programme et sensibiliser les gens à celui-ci, il va de soi que les citoyens ne seront pas enclins à y participer. En outre, s'il n'y a pas suffisamment de bénévoles pour assurer le bon fonctionnement d'un programme, le manque d'organisation et l'instabilité qui en découleront pourraient dissuader des citoyens d'y participer.

Ainsi, plusieurs facteurs peuvent influer sur la participation des citoyens aux programmes communautaires de prévention du crime. Même s'il peut s'avérer difficile pour les décideurs et les chargés de programmes d'intégrer tous ces facteurs potentiels dans un programme de prévention du crime, il est important de tenir compte de ces derniers et d'en être conscient. De plus, même si tous s'entendent généralement pour dire que les citoyens qui ont le plus besoin de programmes communautaires de prévention du crime sont les personnes les moins susceptibles d'y participer, le présent document a révélé qu'il y a à la fois des défis et des possibilités associés au bon fonctionnement de ces programmes dans les collectivités.

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Who is a "Victim"? Racial Profiling and Arguments for a Broader Definition

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In the *Criminal Code of Canada* (Code), the term "victim" is defined twice. Section 2 defines it as including "the victim of an alleged offence". At section 722(4), the definition of a "victim" is as follows:

> (4) For the purposes of this section and section 722.2, "victim", in relation to an offence,
>
> (*a*) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and
>
> (*b*) where the person described in paragraph (*a*) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.[1]

At first glance, the definition appears to be straightforward and clear in delineating the class of individuals who should come under this term. However, as case law surrounding the terms "victims" and "victims' rights" makes clear, the definition of a "victim" is not as inclusive as one may think. Rather, the term has been interpreted with quite a bit of restriction, which results in the exclusion of groups who have undoubtedly been harmed but are left without redress because they do not come within the immediate sphere of family of the primary victim. Further limitations arise from the fact that a "victim" is only

defined in the context of being a victim of an alleged offence. This excludes other types of victimization that may result from acts of non-offenders. For example, what about situations where the actions of the police or other state actors have the effect of rendering certain groups victims of practices such as racial profiling?

This article explores the possibility that individuals accused of committing crimes can be considered "victims" themselves in terms of their interaction with the actors within the Canadian criminal justice system. It is quite unconventional to speak of offenders as victims but in reality when it comes to the violation of a protected *Charter* right, even individuals alleged to have committed crimes can be subject to victimization by forces such as the police. The present way "victim" is defined in s. 2 and s. 722(4) of the *Code,* that is, only in relation to the commission of an offence, leaves individuals who are victims of practices such as racial profiling without any redress other than asserting a *Charter* violation. Just as s. 2 and 722(4) of the *Code* allows victims of an alleged offence to provide input at the sentencing stage, so too should a victim of a discriminatory practice by the police be given consideration at the stage of sentencing. The victimization that results from processes such as racial profiling, and the *Charter* violations associated with it is something that deserves attention from both our legislature and judiciary because of its prevalence.

The Restrictiveness of the Term "Victim"

The only guidance we have for who is considered to be a victim comes from sections 2 and 722(4) of the *Code* and the interpretation of these sections by the courts. In *R. v. Duffus*[2] the court stated that a "victim" includes both the direct recipient of the harm and the victim who is directly affected in an emotional or physical way. In determining who is a "victim" for the purposes of victim impact statements, the courts often look at the closeness of the relationship between the individual and the victim of a crime[3]. The historical restriction that has been placed on the definition of a "victim" and its consideration only in the context of victim impact statements, and the restriction of this debate to considerations of who should be allowed to give a victim impact statement, excludes a wide array of individuals who find themselves victims of the criminal justice process itself. It would be worth thinking about expanding our conception of what a victim is and who qualifies as a "victim" if we want to better protect the rights of individuals who enter the criminal justice system.

Victims of Racial Profiling

Racial profiling by the police is well documented in Ontario as pointed out by the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*[4]. There is also ample case law such as *R. v. Griffiths*[5], *R. v. Pinto*[6], *R. v. Savory*[7], *R. v. Williams*[8], *R. v. Parks*[9], *R. v. R.D.S.*[10], *and R. v. Brown*[11] that discuss the phenomenon. However, despite its prevalence, it is not something that has received wide judicial commentary. Courts such as the one in *R. v. Richards*[12] have made it clear that racial profiling is not in issue when it comes to proving the legality of a stop. The Court in *Richards* did however provide a definition of racial profiling. The Court stated that racial profiling refers to the process whereby "race is illegitimately used as a proxy for the criminality or general propensity of an entire racial group."[13] Race is implicated in the context of criminal investigatory detentions because assumptions about race and crime cause police officers to believe that certain individuals are involved in criminal activity.[14] David Tanovich suggests that when an African Canadian man, for example, is stopped for investigation and the officer has no legitimate reason to suspect that he is involved in any form of criminality, the underlying conscious or unconscious motivation must be the racist belief that African Canadian men are common criminals when it comes to drugs and weapons offences.[15]

In order to understand why a broadened definition of "victim" is required that takes into account other scenarios in which an individual accused of a crime may also be a "victim", it is necessary to discuss the harm that is caused by racial profiling. To begin with it attacks the individual's inherent worth and dignity. But in some instances, racial profiling can be lethal. In *R. v. Parks*[16], Justice Doherty recognized the harm that results from anti – Black racism, which includes the shooting of Black individuals. It is well known that racialized individuals are often subjected to the misuse of police

power in routine practices, police harassment, and police brutality.[17] The death of J. J. Harper, an Aboriginal leader in Manitoba, is an illustration of police excess. A Winnipeg Police officer fatally wounded Harper when he walked away from the police after refusing to provide identification in relation to the investigation of a stolen vehicle.[18] In addition to those harms there are also the numerous violations of *Charter* protected rights such as the right to protection from unreasonable search and seizure under s.8, and the right to be free from arbitrary detention or imprisonment under s.9. As the discussion of the 2009 Supreme Court of Canada case *R. v. Grant* attempts to demonstrate below, despite the harm that results from racial profiling, the courts have been extremely reluctant to address this problem. It seems that, even when there are strong facts to support the conclusions that an individual was the victim of racial profiling, rarely doe the courts make such a finding. This has caused some to conclude that both the judiciary and the legislatures have averted their minds from the danger of discriminatory intrusion in investigative street detentions.[19]

The facts of *R. v. Grant* are as follows. Mr. Grant is a young Black man who was stopped by three officers, Constables Worrell, Forde, and Gomes. Constables Worrell and Forde decided that they should have a chat with Mr. Grant and see "what's up with him", because he "stared" at them in what they considered to be an intense manner and was "fidgeting" with his coat, all of which made him appear "suspicious". Cst. Gomes was the first to get out of his car. He stood in the direction Mr. Grant was headed and asked him what was going on. The officer also asked Mr. Grant for his name and address. Constables Worrell and Forde then pulled up and approached the pair on the sidewalk, identified themselves as police officers, and stood behind Cst. Gomes, obstructing Mr. Grant and preventing him from continuing forward. The exchange that occurred next between Mr. Grant and the officers is as follows:

Q. Have you ever been arrested before?

A. I got into some trouble about three years ago.

Q. Do you have anything on you that you shouldn't?

A. No. (Pause.) Well, I got a small bag of weed.

Q. Where is it?

A. It's in my pocket.

Q. Is that it?

A. (Male puts his head down.) Yeah. Well, no.

Q. Do you have other drugs on you?

A. No, I just have the weed, that's it.

Q. Well, what is it that you have?

A. I have a firearm.

After disclosing that he had a firearm, Mr. Grant was arrested and searched. The police seized the marijuana and the loaded revolver. Mr. Grant was then advised of his right to counsel and taken to the police station.

At the trial level Mr. Grant argued that his rights under ss. 8, 9, and 10(b) of the *Charter* were infringed upon. The issue at the Supreme Court of Canada was whether the evidence of the gun was obtained in a manner that breached Mr. Grant's *Charter* rights, and if so, whether the evidence should have been excluded under s. 24(2) of the *Charter*. The majority of the Supreme Court held that Mr. Grant was detained and that the detention was arbitrary, in breach of s.9. In regards to s. 24(2), they ruled that the admission of the gun into evidence would not bring the administration of justice into disrepute.

In determining whether the detention was arbitrary, the Court cited *Mann*[20], a Supreme Court of Canada case that held that the police may detain an individual for investigative purposes if there are reasonable grounds to suspect that the individual is connected to a particular crime and that the detention is reasonably necessary under the circumstances. *Mann* stated that in the absence of at least reasonable suspicion that the individual is connected to a particular crime, detention is unlawful and therefore arbitrary under s. 9. In the present case, *R. v. Grant*, the officers and all the parties agreed that there were no legal grounds or reasonable suspicion to detain Mr. Grant prior to his incriminating statements. As a result, the Court concluded that the detention of Mr. Grant was arbitrary.

In the minority opinion of the decision, Supreme Court judge Binnie J. argued that in regards to psychological detention, more weight should be given to the values and experience of the person actually stopped, including the experiences of visible minorities. He took note of a growing body of evidence and opinion that suggests that minorities and marginalized individuals are at a higher risk of unjustified, "low visibility" police interventions in their lives. He noted that Mr. Grant was Black and that in situations involving minorities, the courts cannot presume to be colour-blind. He noted that minorities may feel unable to walk away during an encounter because of their background and experience with White authority. They may also fear that by ignoring the directions of the police and asserting their right to walk away, they will be seen by the police as being evasive. The police would then be able to justify their decision to detain the individual by saying that they did so because the individual seemed evasive.

In my opinion, Mr. Grant was not only psychologically detained as a result of his racial background; he was also a victim of racial profiling. Psychological detention occurs where there is no physical restraint or legal obligation causing the individual to be detained. It refers to instances where an individual does not feel free to walk away from the police because of factors such as their race even where there is no physical restraint by the police or legal obligation to comply. In regards to racial profiling, that occurred before Mr. Grant was detained. The reason the police chose to focus on Mr. Grant in the first place was because he is Black. The reason that Mr. Grant did not feel free to walk away after having been stopped by the police was also because he was Black.

It is disappointing that the Supreme Court rejected the possibility that Mr. Grant was racially profiled even though they acknowledged that minorities and marginalized individuals are at a higher risk of unjustified stops by the police. The admission that minorities may feel unable to walk away during an encounter because of their background and experience with White authority speaks to the psychological harm that is being done to these individuals. Although the SCC did not concede that Mr. Grant was racially profiled, the circumstances surrounding his stop and the fact that his detention was proven to be arbitrary suggest that he was more than likely a victim of racial profiling. In his comment on Grant at the appellate level, David Tanovich suggests that based on the surrounding circumstances of the case, it is highly probable that Mr. Grant was singled out for investigation because he "fit the stereotype of the usual drug and gun offender in Toronto".[21] Cases such as this one seem to suggest that minorities who find themselves in the same position as Mr. Grant will often succumb to the demands of the police even where the police lack authority, out of fear of serious repercussions. Unless our judiciary and other actors within the criminal justice system arewilling to recognize the reality that individuals who come in contact with the criminal justice system may become victims themselves through the process, these individuals will never receive redress for their harms.

Addressing Racial Profiling at Sentencing

The purpose of this discussion is to think of ways in which we can address the harm from such processes. The reason our criminal code has provisions relating to victims is to involve them in the criminal justice process at the stage of sentencing of offenders. Commonly the only course of action that is taken in cases suspected of involving racial profiling is to argue that their Charter rights have been violated in hopes of having the evidence against them excluded. S. 24 of the *Charter* states,

> 24. (1) Anyone whose rights or freedoms, as guaratneed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and justin the in the circumstances.
>
> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.[22]

While this may be the correct course of action to take when there is proof of *Charter* violations, what happens when, despite finding a violation and a remedy under s. 24, the Court still finds the individual guilty of an offence? I propose that similarly to the way s. 722 makes victim impact statements relevant to the sentencing of offenders, the fact that an individual was subject to racial profiling should also be a relevant factor when it comes to the sentencing of the offender.

In *R. v. Nasogaluak*[23] the Court discussed the potential for courts to address breaches of the accused's constitutional rights through the sentencing process under the *Code*. The issues to be determined in that case included whether or not the police officers used excessive force during the accused's arrest and whether it amounted to a violation of the accused's rights under s. 7. The Court had to decide whether there are limits on a sentencing judge's discretion to reduce a sentence as a *Charter* remedy. The Court found that the police did use excessive force in breach of s. 7 of the *Charter*. It was held that where the misconduct of the police or state relates to the circumstances of the offence or the offender, the sentencing judge has discretion to take those relevant factors into account in determining a fit and proportionate sentence without necessarily having to resort to s. 24(1) of the *Charter*. Those factors may be relevant mitigating factors that may warrant a reduction in the sentence. The Court held that this is true even in cases where the state misconduct does not amount to a *Charter* breach but has some impact on the offender.

In relation to the discussion of the harm caused to victims of racial profiling, based on the reasoning of the Court in *Nasogaluak*, one can argue that since a sentencing judge can take into account police violence or other state misconduct without proof that the incidents about which there is a complaint amount to a *Charter* breach, a sentencing judge should also be able take into account the fact that an individual was a victim of racial profiling in determining an adequate sentence.

Conclusion

The current definition of a "victim" by the *Code* and its subsequent interpretation by the courts is too restrictive and not broad enough to take into account the possibility that individuals other than those who are alleged victims of an offence may also be victimized by the criminal justice process. The present definition does nothing to address the harm caused to alleged offenders who are victims of racist practices such as racial profiling. I suggest that where there is evidence to suggest that an individual is a victim of racial profiling, that this be a mitigating factor at sentencing because there is no guarantee that even where a *Charter* violation is proved that the evidence against the individual will be excluded. The fact that an offender can still be convicted of an offence despite the presence of *Charter* violations makes it even more crucial to have a broader conception of the term "victim" so that at least this victimization can be accounted for somewhere in the criminal process. While the ideal situation would be to have a world in which the rights of alleged offenders are protected at all stages of the criminal process, in the face of problems such as the overrepresentation of African Canadians in the criminal justice system, having some form of redress at least at sentencing is better than nothing.

1 R.S., 1985, c. C-46, s. 722; 1995, c. 22, s. 6; 1999, c. 25, s. 17 (Preamble); 2000, c. 12, s. 95.

2 *R. v. Duffus*, 40 C.R. (5th) 350 (Ont. S.C.J.).

3 *R. v. McDonough* 2006 CarswellOnt, 3339, 209 C.C.C. (3d) 547 (Ont. Supt. Crt.).

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5 *R. v. Griffiths*, (2003), 106 C.R.R. (2d) 139, 11 C.R. (6th) 136.

6 *R. v. Pinto* (2003), 113 C.R.R. (2d) 140, [2003] O.T.C. 1095.

7 *R. v. Savory*, 95 C.R.R. (2d) 261, [2002] O.J. No. 2715.

8 *R. v. Williams* [1998] 1 S.C.R. 1128, 124 C.C.C. (3d) 481.

9 *R. v. Parks* (1994), 84 C.C.C. (3d) 353, 15 O.R. (3d) 324 (Ont. C.A.).

10 *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, 118 C.C.C. (3d) 353.

11 *R. v. Brown*, 57 O.R. (3d) 615, 48 C.R. (5th) 291.

12 *R. v. Richards*, 26 C. R. (5th) (Ont. C.A.).

13 *Ibid.* at 294.

14 David Tanovich, "Using the Charter to Stop Racial Profiling: The Development of an Equity-Based Conception of Arbitrary Detention" (2002) 40 Osgoode Hall L.J. 145 at 150.

15 *Ibid.*

16 *R. v. Parks* 84 C.C.C. (3d) 353 at 367-368 (Ont. C.A.).

17 Toni Williams, "Racism in Justice: The Report of the Commission on Systemic Racism in the Ontario Criminal Justice System", in Susan C. Boyd, Dorothy E. Chunn & Robert Menzies, eds., *Using Power: The Canadian Experience* (Halifax, NS: Fernwood Publishing, 2001) at 200.

18 David Tanovich, *The colour of justice: policing race in Canada*, (Toronto: Irwin Law, 2006) at 142.

19 Alan Young, "All along the Watchtower: Arbitrary Detention and the Police Function" (1991) 29 Osgoode Hall L.J. 329.

20 *R. v. Mann*, [2004] 3 S.C.R. 59, [2004] S.C.J. No. 49.

21 David Tanovich, "The Further Erasure of Race in *Charter Cases*" (2006) 38 C.R. (6th) 84, at 6.

22 *The Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

23 *R. v. Nasogaluak* 2010 SCC 6.

Moral Panic and White Collar Crime: The Legislative Response

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The price tags attached to white collar crime today are "so staggering that they are difficult to comprehend." (Rosoff, 2004, viii) Clearly losses to public markets in the order of $70 billion for Enron and investment schemes such as that perpetuated by Bernie Madoff for $65 billion in the U.S. are indeed incomprehensible. In Canada we have the somewhat comparative numbers of $500 million for market loss to Livent and $50 million in investor losses as a result of the financial crimes of Bertram Earl Jones.

Significantly there is the human cost to white collar crime. There is no doubt that the personal tragedies caused by wilful acts of deceit have caused damage that in very many cases is irreparable. To quote one jurist:

> ...all victims now suffer from insomnia. Almost all have seen their health suddenly deteriorate with symptoms never experienced before. Two have seen recurrence in the cancer they are suffering from. Some who took pride in never having taken medication are now living on antidepressants. Some even experienced suicidal thoughts.
>
> ...some feel isolated as they are ashamed and feel responsible for not having been more careful. The accused is also responsible for irreparable tensions in family relations and the ending of long time friendships.
>
> ...the accused not only robbed the victims of their money, he robbed them of their freedom and self-esteem and of a decent life they expected in their retirement. All of them trusted him. For many, this word has no meaning anymore. He is responsible for irrevocable changes in all of the victims' lives and this has left all of them humiliated.(Morin decision, *R. v. Jones* [2010] Q.C.C.Q. 851 at para.2)

There is also the "less tangible, but equally significant loss to society. It fosters cynicism. It erodes public confidence in the financial markets" (*R. v. Drabinsky* [2009] O.J. No. 449) Even the casual consumer of the mass media encounters, almost daily, reports of harmful or destructive crime committed by privileged citizens and large corporations. The media generally single out for attention the "most gluttonous offenders and the most egregious crimes."(Shover & Hochsteller, 2006, xiii)

Enacted Legislation

The Canadian response to instability and moral panic in financial markets was the enactment of Bill C-13. The overall purpose of the Bill was aimed at "strengthening measures to investigate, prosecute and deter capital markets fraud." In order to achieve this goal, the Bill implemented five new principal provisions under the *Code*. The bill created a new criminal offence of improper "insider trading"; it provided whistleblower protection to employees who report unlawful conduct; it increased the maximum sentences for existing fraud offences and established a list of aggravating factors to aid the courts in sentencing; it allowed the courts to issue production orders to obtain data and documents from persons not under investigation; and it established concurrent federal jurisdiction to prosecute certain capital market fraud cases.

Bill C-13's predecessor, Bill C-46, was perceived as generally positive. Many believed it would be an important step toward deterring corporate crime, improving enforcement and actively engaging the federal government in the deterrence and prosecution of capital markets fraud.

Moral panic legislation blames social problems on bad people rather than bad structures and Bill C-13 bears these hallmarks by casting corporate officials as deviants. Crime and punishment are emotive issues.

> If public trust in the administration of justice is eroded further, there are risks to the political process itself. In several countries there have been signs recently that far-right ... political parties can successfully exploit public anger about crime to broaden their electoral appeal. (Roberts and Hough, 2002, 2)

Media coverage of crime stories explains much of the public's interest in criminal justice, as well as the limited extent of their knowledge of the criminal justice system.

> The news media pay a great deal of attention to crime, whether in the form of fictionalized dramas or news programs. People who watch a lot of television or who read a lot of newspapers will be exposed to a steady diet of crime stories. The information conveyed, however, will not necessarily reflect the true nature of crime as recorded in official crime statistics. (Roberts and Stalans, 1997, 2)

Additionally:

> All too often legislators and policy-makers and newspaper editorialists use public opinion to advance their own criminal justice policy agendas. "This is what the people want," we are told, as politicians attempt to peddle their pet criminal justice policy. (Roberts and Stalans, 1997,6)

And so we have the Conservative Party of Canada promulgating a crime control agenda:

> Every time we proposed amendments to the Criminal Code, sociologists, criminologists, defence lawyers and Liberals attacked us for proposing measures that the evidence apparently showed did not work...That was a good thing for us politically, in that sociologists, criminologists and defence lawyers are all held in lower repute than Conservative politicians by the voting public. Politically it helped us tremendously to be attacked by this coalition of university types.(Former Chief of Staff Ian Brodie as cited in *MacLean's,* November 16, 2009, 22)

The government's response to repeated requests to provide a factual basis for its policies is quite simply: "we have the higher mandate of the Canadian people."(Justice Minister Robert Nicolson, *MacLean's,* November 16, 2009, 22)

In broad terms, surveys have consistently found that:

> the public hold several misconceptions about crime rates. These include the view that crime rates are always rising. This response has generally been independent of actual changes in the crime rate, whether measured by official statistics or victimization surveys. (Roberts and Stalans, 1997, 26)

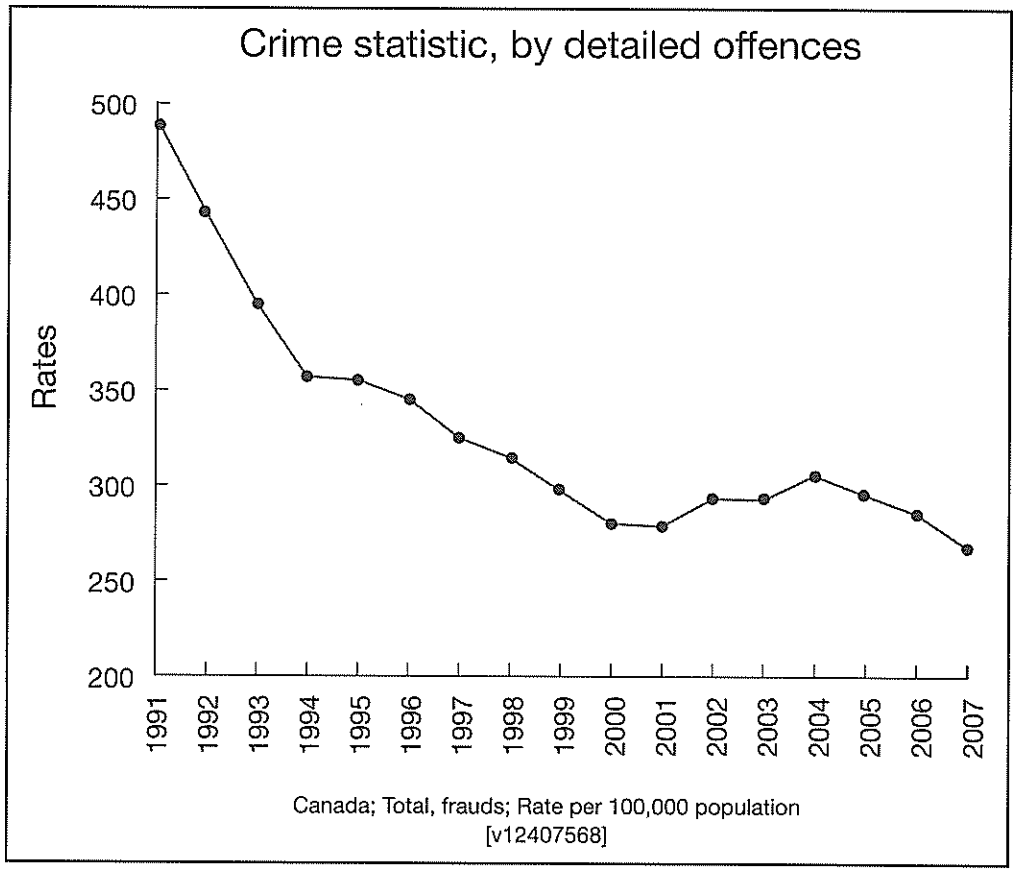
> Notwithstanding the attenuated public and political focus on castigating white collar crime, does the empirical evidence justify the "tough on crime" agenda aimed at white collar offenders? In this regard are crimes, both violent and non-violent on the rise?

Certainly when the public puts its mind to crime rates, first thought goes to crimes of violence. These are the offences that generate the greatest news headlines and garner the most exposure on television and film. This is a fundamental availability heuristic.

In measuring crimes of violence over the past decade, Statistics Canada data show that same occurred 970.86 times per 100,000 population in 1999, and declined to 940.87 in 2007 for that same comparable. As such, these offences have reduced in occurrence over this time period 3.1%.

Collaterally in measuring crime rates, the more relevant examination looks at property crimes. In this regard, the past ten years has seen the rate per 100,000 population go from 4.275.50 in 1999 to 3,319.69 in 2007. This represents a very perceptible shift downward in the order of 22.4%.

Table One[2]



Most particularly with regard to convictions for fraud, a look at the broader view of the past twenty years provides an extraordinarily significant trend that illuminates a counter intuitive environment to the one that engenders a financial moral panic.

In 1991, the rate of frauds in Canada committed per 100,000 population was 488.36. (Statistics Canada (Stats Can). *Table 252-0013, supra*) This rate declined consistently to 2001 to 278.80 per 100,000 population, a decline of 42.9%. This is very close to halving the incidents of fraud. There is a reversal upward between 2001 and 2004, however. There is no particular reason given by Statistics Canada for this change, but the shift follows closely on the heels of the and *Sarbanes-Oxley Act*[1] in the United States together with the introduction of Bill C-13 in Canada and the concomitant strategies to beef up the enforcement of market fraud. Nevertheless, in 2005 the crime rate attributable to frauds recommenced its downward spiral with the rate per 100,000 population reaching 267.72, the lowest level ever recorded. Most specifically and amazingly, the per cent change for the last two decades amounts to a diminution of 45.2%.

These dramatic downward trends show that the perceived risk of crime, most importantly relative to the incidents of fraud, is far greater than the actual risk borne out by the empirical data.

Proposed Legislation

Two very recent bills introduced by the current federal government further advance the tough on crime agenda, with particular impact upon white collar criminals. Bill C-16 (*An Act to amend the Criminal Code (Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act*) was introduced in the House on April 22nd, 2010 and Bill C-21 (*An Act to amend the Criminal Code (sentencing for fraud) (Standing up for Victims of White Collar Crime Act*) was introduced on May 3rd, 2010. Bill C-16 proposes to remove the offence of fraud from the prospect of having a conditional sentence of imprisonment available as a sentencing option as set out in s.742 of the *Code*. Bill C-21

takes direct aim at fraud by proposing, *inter alia*, the imposition of a mandatory minimum sentence.[3] It is not hard to see the reason why the proposed legislation is directed at the sentencing process. When members of the public think about crime, their thoughts frequently turn to punishment. Indeed, for many people, the criminal justice process can he reduced to an equation in which criminal behaviour is matched by judicial punishment. Or, more precisely, crime is matched by time, for most people consider punishment to consist exclusively of sentences of imprisonment.(Roberts and Stalans, 1997, 197) When the question is posed if sentences are too harsh, about right, or not harsh enough, it consistently generates the result "that the vast majority of the public... express their desire for harsher penalties. In fact, the question concerning sentencing severity generates a more consensual response than any other issue in criminal justice, including capital punishment." (207)

The Canadian Sentencing Commission asked the same question in 1985 in a nationwide poll conducted by the Gallup organization. Questions were asked about the issues of public knowledge about, and attitudes towards parole and the sentencing process in Canada.

In probing the opinions of people on their perception of sentences being imposed to three target populations: (native offenders; people who are wealthy and/or well-known; people who are poor) respondents were asked if the sentences handed down to these three groups were too harsh, appropriate, or too lenient. The following were the results of the poll:

> Respondents were equally likely to state that native offenders received sentences that were too harsh (19%) as opposed to too lenient (18% ...). There was a great deal of consensus about wealthy offenders however: 77% thought that this group received disproportionately lenient sentences. The third offender category contained people who are poor, and respondents stated that they received disproportionately harsh sentences (43%). Thus as far as types of offenders are concerned, the public perceive disparity to arise as a consequence of lenient sentences for the wealthy. (Canadian Sentencing Commission (1987) "Sentencing Reform: A Canadian Approach." Ottawa: Minister of Supply and Services)

There is little doubt that there is a palpable political gain to any government being seen as tough on crime by seeking to escalate the severity of harsh sentences for white collar criminals. There is very little risk.

By promoting the moral panic to substantiate the merits of Bill C-16, we have:

> **'Government Introduces Bill to End House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders'**
>
> P.C., Q.C., M.P. for Niagara Falls, Minister of Justice and Attorney General of Canada, and the Honourable Pierre-Hugues Boisvenu, Senator, today announced the re-introduction of legislation to end the use of house arrest for property and other serious crimes by serious and violent offenders.
>
> Our government is taking further action to crack down on crime and to protect the safety and security of our communities," said Senator Boisvenu. "The proposed legislation would ensure that house arrest is no longer used for offences that pose a significant risk to law-abiding citizens." (Market Wire: Ottawa, April 22, 2010)

With regard to the proposal for a mandatory minimum sentence for a large scale fraud:

> **'Tackling White-Collar Crime'**
>
> The following information was released by the Department of Justice of Canada:
>
> Fraud can have a devastating impact on the lives of its victims, including loss of life savings and feelings of humiliation for having been deceived into voluntarily handing over their property. The Government of Canada is proposing to amend the fraud provisions of the Criminal Code in order to better respond to victims of economic crime by providing tougher sentences for those who victimize honest citizens. (States News Service, Ottawa, Tuesday, October 20, 2009)

It is fair to say that scholars and others in the justice arena do not support the restrictions on judicial reasoning that Bill C-16 would impose, nor the methodology behind the value of mandatory minimum sentences envisioned n Bill C-21.

With respect to the proposed unavailability of a conditional sentence for a conviction for fraud, the enactment of the amendments to the *Criminal Code* in 1996,[4] addressed the

significant overuse of incarceration as a punishment for criminal offences in Canada.[5] As such, the introduction of conditional sentences as an intermediate measure between probation and incarceration was a determined attempt to meet this concern.

Historically, the 1996 amendments to the Code were the invention of the Liberals. For the first ten years of the availability of conditional sentences, there were no serious changes proposed to restrict their imposition while the Liberals remained in power.

In early 2006 the Conservative Party of Canada took office. On May 4th of that year Bill C-9 was introduced. This bill, in its initial form was an exceptionally restrictive piece of legislation that would have seriously limited the ambit of conditional sentences. Its intended purpose was to eliminate a sentencing court's discretion to impose a conditional sentence for any offences that carried a statutory maximum sentence of ten years or more and were prosecuted by way of indictment.

The response from legal scholarship was swift. Firstly, the use of statutory *maxima:*

> ... has long been regarded as an unreliable guide to the relative seriousness of offences, and cannot incorporate the proportionality requirement of an offender's culpability...
>
> Legislating a statutory bar to the imposition of a conditional sentence for almost 200 offences if proceeding by way of indictment will do little to improve the conditional sentence regime, and will have a number of adverse consequences. (Julian Roberts "Reforming Conditional Sentencing: Evaluating Recent Legislative Proposals" (2006) 52 C.L.Q. 18, 21)

Secondly, leaving the discretion in proceeding by way of indictment or summary conviction solely in the hands of the Crown was seen as arbitrary and unpredictable.

The Standing Committee on Justice and Human Rights rejected this exceptionally broad approach and amended the bill to only include "a serious personal offence as defined in section 742, a terrorism offence of a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more."[6]

The Conservatives voiced their disappointment in the dilution of the original proposals:

> Despite repeated efforts by this Government to move legislation through the House of Commons, we still have important crime bills that have not yet become law. We are disappointed that the Opposition has not allowed us to bring the rest of our legislative agenda into force. (The Honourable Robert Nicholson, Minister of Justice and Attorney General of Canada, as released by the Department of Justice, Canada News Room, Ottawa, May 31st, 2007)

The government introduced Bill C-42 on June 15th, 2009 to end conditional sentences for serious property and violent crimes. The Honourable Robert Nicolson, as Minister of Justice made clear:

> The Government is committed to ensuring that those who commit serious crimes and who are sentenced to jail serve that time behind bars, and not in the comfort of their homes.(Market Wire, Saturday June 13, 2009)

Bill C-42 died on the order paper on December 30th, 2009 when Parliament was prorogued to March 3rd, 2010. The bill was re-introduced in its entirety as Bill C-16 on April 22nd, 2010.

The changes proposed to the Criminal Code in this bill brought back to life the discredited use of statutory maxima as a precondition that make conditional sentences unavailable for offences, inter alia, for which the law prescribes a maximum sentence of 14 years or life. This would include fraud as found in s.380 (1) of the Code if prosecuted by way on indictment.

The argument that mandatory minimum sentences are appropriate for white collar crime is a recent one. John Esterhay recently put forward the proposition that judges have been far too lenient in sentencing offenders for financial crime and as such, judicial discretion should be curtailed.(Esterhay, 2010, 22) He sees mandatory minimum terms of imprisonment as the perfect solution to judges' refusal to impose harsh sentences through the U.S. Federal Sentencing Guidelines on serious white-collar violators. He argues that "...by providing a considerable, guaranteed term of imprisonment, mandatory minimums deter would-be criminals who are anxious about the prospect of serving hard time." (172) The author offers no evidence, however as to the efficacy of deterrence as a result of the certainty of imprisonment.

In Canada, the scholarship in this area is sparse. The most concentrated collection of essays can be found in the Summer/Fall edition of Volume 39 of the Osgoode Hall Law Journal for 2001.[7]

It would be a broad statement to say that there is a universal theme in this material denouncing mandatory minimum sentences, but that conclusion is closer to the truth, than not. To quote Professor Elizabeth Sheehy of the University of Ottawa Law Faculty: "the literature that might advocate reliance upon mandatory minimum sentencing is almost non-existent. The sole proponents of mandatory minimum sentencing in Canada appear to be politicians whose positions on the advantages of these laws are without a clear basis in either research or policy" (Sheehy, 2001, 261)

More recently, there is the further opinion that the concept of mandatory minimum sentences runs counter to the general principles of judicial discretion and individuated justice that we appear to value in Canada.

> Perhaps the most egregious failing of mandatory minimums is that they have failed to do the key thing politicians advocating them have always claimed: work to reduce crime.

What both the evidence relating directly to mandatory minimums and evidence in relation to sentence severity and mandatory three-strikes legislation show is that the actual effectiveness of mandatory sentencing is far below what enacting politicians will have the public believe. Given the lack of compelling evidence to support the most poignant rationale for mandatory minimums — that they prevent crime — one must surely question why we continue to use them.(Malik, 2007, 250)

Conclusion

Without a doubt, the scope of white collar crime in the last twenty years has been monumental with regard to the dollar value of loss, and the widespread harm to millions of ordinary people affected by the destruction of value to capital markets; mutual funds; pension funds; and personal investments.

There are numerous vignettes of tragedy for many who have lost their life savings, and perhaps most importantly, it is accepted wisdom that financial crime tears at the core of society.

There is also little doubt these crimes are almost daily fodder for the media and provide a wellspring of electoral fortuity for politicians who decry the need to legislate a response.

The question becomes, is it the offence or the offender that should best be the target of political sanction? While the response to the sinister manipulation of capital market value and the sheer greed of pump and dump schemes perpetrated by corporate executives initially led to efforts to address the structural base of the problem, the agenda of the current Canadian government is directed at the very limited focus of how to more severely punish white collar criminals.

The scholarship is united in the view that limiting the scope of judicial discretion at sentencing, whether it be restricting the availability of community custody, or the imposition of a mandatory minimum sentence is not well reasoned nor meets any criminological purpose.

But this focus does meet the need to appear to be "tough on crime" and thereby engenders political opportunism. This is notwithstanding the empirical evidence that crime rates generally, and the incidents of fraud specifically have been falling for decades. The perceived risk of economic deceit far outstrips the actual risk.

We do live in an era of financial moral panic. To redress the significant wrongs that so severely impact the victims of white collar crime takes more than a political will that appears increasingly interested in simply garnering public support.

Real effort and research is needed to put the appropriate safeguards in place to proactively protect the public from those who are willing to abuse their positions of trust and privilege to deceitfully and disgracefully enrich themselves.

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Footnotes

1 The law's provisions (1) created an independent Public Company Accounting Oversight Board to police the accounting industry`; (2) required that CEOs certify the accuracy of the companies' financial statements and included stiff criminal penalties for violations; (3) created new criminal penalties of up to twenty-five years in prison for document shredding and defrauding shareholders; and (4) directed the Sentencing Commission to revise sentences for a number of white-collar crimes.

2 Source: Statistics Canada, CANSIM table 252-0013.

3 For frauds over one million dollars, the mandatory minimum sentence proposed is two years.

4 In 1996 Parliament enacted Bill C-41, reforming Canada's sentencing regime and explicitly incorporating restorative principles into Part XXIII of the *Criminal Code*. S.718.2 (e) sets out principles of sentencing and stipulates that judges consider "all sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders." This provision mandates that incarceration be the sanction of last resort for all offenders at sentencing.

5 The Supreme Court of Canada in *R. v. Gladue* [1999] 1 S.C.R. 688 at para. 52 acknowledged that Canada's incarceration rate of approximately 130 inmates per 100,000 of population placed it at 2nd or 3rd highest among industrialized democracies.

6 Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, 39th Parl., 1st sess (2006): October 23rd, 2006. The Bill was also amended to exclude drug related offences in response to a submission made September 26th, 2006 by the Canadian HIV/Aids Legal Network. The Bill received Royal Assent on May 31st, 2007: S.C. 2007 c.12.

7 This special issue of the Osgoode Hall Law Journal takes up the theme of mandatory minimum sentencing in Canada: the historical and current manifestations in criminal laws; its public policy dimensions; its impact on diverse communities; the pressures it exerts at different points in the criminal process; and its constitutional implications.

Millhaven Lifers Liaison Group: Bringing Together Prisoners and Community

By Rachelle La Salle,

student at the University of Ottawa and Chair of the MLLG

The Millhaven Lifers Liaison Group was formed in the spring of 2009. Originally comprised of students based solely at the University of Ottawa, the group now includes students at Carleton University as well as members of the broader comm unity. As an action group with the Ontario Public Interest Research Group (OPIRG) of Ottawa, the mission of the MLLG is to advocate on behalf of life-sentenced prisoners and to help combat the stigma associated with the label offender/ prisoner/criminal. The pains of incarceration are very real for those serving life sentences, as well as for their families. This group helps to break the isolation felt by long-term prisoners by meeting with them every three weeks, at Millhaven Institution in Bath, Ontario, a maximum-security penitentiary.

We continue to grow and develop as a group in order to bring awareness to our campuses and our community. We also collaborate with Lifers in order to fill certain needs. For instance, we recently purchased for them a small collection of resource books (such as sociology, accounting, rights, world history, geography). In addition, we have begun a link with the "Books for Prisoners", another action group from OPIRG-Carleton, in an effort to improve library material within the institution.

We focus on community and reintegration by working in collaboration with the Correctional Service of Canada. We also have also recently begun community talks to bring awareness to the community about the realities of incarceration and the current state of the prison, from the perspective of those on the receiving end of the carceral and we also organize talks to high school students about our justice system.

The Millhaven Lifers Liaison Group benefits both outside and incarcerated members. For outside members, participation in the group brings a measure of understanding of the realities of incarceration, the current state of the Canadian criminal justice system, and an opportunity to connect with people serving life sentences, thereby demystifying certain stereotypes. For the lifers, the social interaction with the group provides several benefits: they seek "social interaction through the group's fellowship to assist offenders in leadership, rehabilitation, and acceptance by fostering skills to help achieve their goals" (Lifers' Group Constitution). Since they are cut off from the outside, Lifers seek support from outside/community members who can speak on their behalf of their development, act as a link to the community and bring awareness to the difficulty of reintegration.

Successful reintegration into the community is the main goal of most lifers. By collaborating with members of the community, having family support, pursuing education and developing work skills, they hope to one day return to the community as productive and fully functional members.

The media's propensity for sensationalism has helped to foster misconceptions about the type of person behind bars as well as the quality of prison life. The MLLG hopes to counter these portrayals by their presence in the community while at the same time continuing to "offer a level of unity, support, and assistance to any offender wishing to develop in a positive manner." (Lifers' Group Constitution).

For more information on the MLLG, or to become involved as a volunteer, please contact Rachelle La Salle at millhavenlifers@hotmail.com

Groupe de liaison avec les condamnés à vie de Millhaven : Créer des liens entre détenus et la communauté

Par Rachelle La Salle,

présidente, Groupe de liaison avec les condamnés à vie de Millhaven, et étudiante à l'Université d'Ottawa

Le **Groupe de liaison avec les condamnés à vie de Millhaven** a été crée au printemps 2009. À ses début, le groupe était formé seulement d'étudiantes et étudiants de l'Université d'Ottawa. Aujourd'hui, un an plus tard, il inclut également des étudiantes et étudiants de l'Université de Carleton ainsi que des membres de la communauté. En tant que groupe d'action affilié avec le Groupe de recherche d'intérêt public de l'Ontario (GRIPO) à l'université d'Ottawa, notre mission est d'agir comme lien entre les personnes condamnés à perpétuité et la communauté, et de plaider en faveur de minimiser les stigmates associés aux étiquettes "condamnés", "détenu", et "criminel". Les méfaits de la prison pour les personnes détenues à perpétuité ainsi que pour leurs familles, ne sont pas minimes. Ce groupe cherche à briser l'isolement ressentie par ces prisonniers en les rencontrant à l'Institution Millhaven, un pénitencier à sécurité maximale à Bath en Ontario, et ce, à toutes les trois semaines.

Nous continuons de croître en tant que groupe d'action pour sensibiliser les gens de nos campus et de notre communauté. Nous collaborons également avec les condamnés à perpétuité pour répondre à certains besoins. Par exemple, nous leur avons récemment acheté des livres sur divers sujets (sociologie, comptabilité, les droits de l'homme, histoire du monde ainsi que la géographie). Nous sommes aussi affiliés avec le groupe d'action "Books to Prisoners" qui fait également partie du GRIPO pour aider à fournir de meilleurs livres à la prison de Millhaven.

Nous sommes axés sur la communauté ainsi que sur la réintégration en collaboration avec le Service correctionnel du Canada. Nous avons récemment commencé à sensibiliser la communautés aux réalités de la prison et à son état actuel, du point de vue de ceux qui y sont renfermés, en plus d'organiser des conférences avec des étudiants du secondaire afin de leur faire prendre conscience des enjeux liés à notre système pénal.

Le Groupe de liaison avec les condamnés à vie de Millhaven apporte des bienfaits, tant aux personnes de l'extérieur qui rendent visite à la prison, qu'aux personnes qui y sont détenues. Pour ces premiers, la participation au groupe apporte une compréhension plus profonde des réalités liées à l'incarcération, de l'état actuel du système de justice pénal, ainsi qu'une opportunité de rencontrer les personnes détenues à perpétuité, ce qui démystifie les stéréotypes. Pour ces derniers, le groupe propose "une interaction sociale axée sur le leadership, la réhabilitation et la tolérance en favorisant l'apprentissage de compétences dans certains domaines pour atteindre leurs objectifs." (Constitution du MLLG) Étant donné la rupture importante entre le détenu à perpétuité et sa

communauté, créé par l'emprisonnement, ce dernier cherche à construire des ponts, et les membres non-incarcérés (outside members) peuvent agir comme porte-parole dans la communauté pour parler de leur développement, et apporter une sensibilisation aux défis de la réinsertion sociale.

Une réinsertion sociale réussie, c'est le but principal de presque tous les détenus à perpétuité. En s'associant et en collaborant avec les membres de la communauté, en maintenant les liens familiaux, en poursuivant les études et le développement d'habiletés de travail, ils espèrent réintégrer la communauté à titre de membre fonctionnel et productif.

Le sensationnalisme des médias a un impact négatif et a contribué à créer une fausse idée sur les conditions en prison et sur les types de personnes y étant confinées. Le "Groupe de liaison avec les condamnés à vie de Millhaven espère contrecarrer ces représentations erronées et continuer à "offrir un sentiment d'unité, de support et d'assistance à ceux qui cherchent à évoluer dans un encadrement positif." (Constitution du MLLG)

Pour de plus amples renseignements sur le Groupe de liaison avec les condamnés à vie de Millhaven, ou pour en savoir davantage sur la façon de s'y impliquer à titre de bénévole, s.v.p. contactez Rachelle La Salle à l'adresse courriel suivante: millhavenlifers@hotmail.com

Prison Justice Day August 10th

By Claire Delisle

Since 1976, prisoners in Canadian federal penitentiaries observe a one-day work stoppage and fast on August 10th, in order to remember those who have died in state custody and to underscore injustice within the prison walls. On the outside, families, former prisoners, advocates and supporters use the day to organize community events where current issues facing prisoners can be raised and discussed, as well as to pay tribute to those who have lost their lives in an untimely fashion behind the bars.

Prison Justice Day began in response to the death of two men, Eddie Nalon and Bobby Landers, while in the segregation unit of Millhaven Institution in 1975 and 1976, respectively. Eddie took his life after being held in segregation for over two months. Bobby suffered from a heart attack and died. In both cases, the panic buttons in the segregation cells had been deactivated.

A community event was held at the Ottawa Public Library to commemorate PJD and to discuss criminal justice issues affecting the carceral population. This panel session was chaired by Justin Piché, Managing co-editor of the Journal of Prisoners on Prisons. The speakers included Susan Haines, who reminded participants about PJD's historical call to action that continues to this day for compassion, understanding and equal justice for all. She also spoke about some of the international standards for the treatment of prisoners in today's context; Michelle Mann, a lawyer specialized in Aboriginal issues, raised the issue of the over-incarceration of Canada's First Nations. She also discussed the necessity of instituting a Fetal Alcohol Spectrum Disorder test to identify those afflicted with the syndrome so that they may be channelled toward a treatment alternative, rather than be criminalized and punished more harshly for their behaviour; and Kim Pate of the Elizabeth Fry

Societies of Canada talked about the onerous slew of criminal legislation initiated by the Conservative Government and the tragedy of youth incarceration especially when it leads to self-harming and suicide. She implored those in attendance to contact their elected representatives to signal their disavowal of incarceration as a societal response to harm in our communities. A Justice Symposium was also held at the Bronson Centre and sponsored by the Elizabeth Fry Society that featured guest speaker Anne Marie Hagan. Anne Marie, an insightful and knowledgeable motivational speaker, known for her ability to captivate an audience, delivered a message of forgiveness and hope. Having faced the incredible obstacle of the murder of her father, she challenged and empowered the audience to look beyond anger to find the ability to forgive.

In Montréal, a panel discussion was held on the topic of criminalizing risk, and more specifically with respect to HIV transmission. Recent legal shifts have seen the criminalization of HIV transmission, risk and non-disclosure.

In Toronto, CHRY FM radio broadcasted a six-hour special commemorating Prison Justice Day and featuring histories, interviews and music dedicated to PJD. In the evening, supporters were invited to break their fast at a dinner held at the Holy Trinity Anglican Church. The dinner was sponsored by the Toronto Bishop's Working Group on Justice and Corrections, The Bridge Prison Ministry, John Howard Society of Toronto, the Toronto Restorative Justice Conference, the Toronto Harm Reduction Task Force and the Holy Trinity Anglican Church. A JD vigil was also held at the Don Jail where the names of those lost to the prison system were read out.

On the West Coast, a special radio program dedicated to PJD was broadcasted by the Stark Raven Media Collective and a rally at the Claire Culhane Memorial Bench in Trout Lake Park was held featuring speakers who are ex-prisoners, and anti-prison activists.

Crime, Conflict and Justice in a Democratic Transition: Penal Abolitionists meet in Belfast

By Claire Delisle

The 13th edition of the International Committee on Penal Abolition (ICOPA) took place in Belfast between June 23 and 25, 2010. The biennial conference that began in Canada in 1983, has travelled around the world, having been hosted in various countries such as Canada, the US, the Netherlands, Poland, New Zealand, Spain, Costa Rica, Nigeria, Australia, England and now, the North of Ireland. This year, some 90 delegates travelled from North America, Europe, South Africa, Oceania and the Caribbean to take part in three days of discussion and exchange on the realities of incarceration in different zones around the globe, strategies for its abolition and alternatives to address the myriad complex harms and conflicts in our communities, that we commonly refer to as 'crime'. The Canadian contingent comprised seven delegates this year.

At the end of each conference, delegates choose the site for the following conference. Whatever location is chosen, ICOPA devotes a particular focus to the realities of the host-community. Holding the conference in Belfast just as justice and policing powers were being devolved to the New Assembly from London presented a momentous occasion to center on the realities of prisoners and prisons in the Six Counties of the North of Ireland.

Given the political conflict in that locale and the corresponding mass incarceration of Irish Republicans, the prison issue is one of special significance. On the one hand, delegates were able to note the positive results of mass prison resistance undertaken by incarcerated Irish Republicans. From the Blanket protest, to the hunger strike, to the unilaterally Republican-directed education initiatives within the walls, the breadth and intensity of their resistance drew attention worldwide and significantly altered the prognosis of the conflict, with the advent of the peace initiative by Sinn Fein in 1993. On the other hand, the intense campaign against their criminalization has meant that non-political prisoners are often treated with utter contempt. Further, according to those who advocate on behalf of the prisoner population, the prison system in the North is still run under the same harsh regime as was in place during the 30-year armed conflict, making conditions for these prisoners harsher than most. In fact, it was reported that prisons in Ireland (in the Republic and the Six Counties of the North) are, by far, the worst in Western Europe. Of significance, in a locality that has numerous ex-political prisoner groups, there was not a single prison advocacy group for non-political prisoners (referred to as "ordinaries" or "ODCs"—Ordinary Decent Criminals). ICOPA served as the launching pad for a new initiative in prison advocacy, a group called ActionPrisons.

Among the topics broached at ICOPA XIII were women and imprisonment; abolition strategies and alternatives; the work of prisoner organizations such as COPEL in Spain (Coordinadora de Presos Españolas en Lucha); grass roots abolition movements such as Critical Resistance in the US (which counts upwards of 6000 members); the escalation of overcrowding and its subsequent impact on the health of South African prisoners; papers on different topics presented on behalf of incarcerated people; and a panel on the realities of post-conflict political prisoner release and the legacy of captivity on the lives of those who fought in the 30-year war in the North of Ireland.

For the canadian perspective, Jenn Kilty (University of Ottawa) and Leah Devellis (Carleton University) presented a paper on "Transcarceration and the Production of 'Grey Space': How Frontline Workers Exercise Spatial Practices in a Halfway House for Women"; Justin Piché (Carleton University) participated in the "International Perspectives on Abolition Roundtable" and organized and presented the session on the Journal of Prisoners on Prisons and prisoner presentations. The papers of six incarcerated people were read out at this session.

The conference was also an opportunity to view some outstanding films depicted on the cover photo. First, delegates attended a screening of *Mickey B* (See cover photo), an adaptation of Shakespeare's *MacBeth* in a contemporary setting, filmed entirely inside Maghaberry Maximum Security Prison in Lisburn. The cast and crew were all life-sentenced prisoners. This was followed by a question and answer period provided by Tom Magill, the director who is also a former prisoner, and drama professor, and Sam MacLean, a life-sentenced prisoner who has recently been released and who played the part of Duncan in the film. Important lessons on the nature of the human spirit and rehabilitation were drawn. These prisoners were entrusted with a mission, made to feel that they were able to follow through on the project, took on the challenge of becoming actors and of seeing it through to completion, and developed an intense community spirit to get the project done. In addition, this initiative, while given the go-ahead by the authorities, had no involvement of the prison management except for a couple of members of the prison personnel who played small parts in the film. For more information on *Mickey B* or to order a copy of the film, please contact Tom Magill at tom@esc-film.com.

On the second day of the conference, delegates were given the opportunity to spend some time in the community. First, they were taken to the Shankill Road where they were met by a Loyalist former prisoner, for a guided tour of the area and a discussion of the conflict and the peace process from the Loyalist perspective. Then, they went to Republican West Belfast for a similar tour of the landmarks on the Falls Road and a discussion of the tragic events that took place during the conflict. Then it was on to *Cultúrlann,* The Irish Language Community Centre where they viewed the film *H-3.* Written by surviving Hunger Striker Laurence McKeown and the late Republican ex-prisoner Brian Campbell, and filmed in the H-Blocks of Long Kesh prison, this award-

winning film portrays the uncompromising H-Block struggle that took place in opposition to Britain's criminalization of the Irish Republican struggle. From the blanket protest to the hunger strike in which Bobby Sands and nine of his comrades died, this film presents a stark and brutal portrayal of the circumstances of the prison protest during this period (1976-1981). Surviving hunger striker Pat Sheehan was on hand and answered questions from the delegates on the struggle, his part in it, life in captivity, on hunger strike, and the current peace process. Pat Sheehan currently directs Sinn Fein's Middle East Desk. For more information on H-3 or to purchase a copy of the film, please go to www.lovefilm.com. The Director of H-3 is Les Blair.

Delegates also learned of the US initiative called "The Inside-Out Prison Exchange Program" where students and prisoners take university courses together inside the penitentiary. Since its inception in 2002, Inside-Out has offered 250 classes to 7,500 students (incarcerated and non-incarcerated) and has over 200 certified instructors. According to one lifer who participated in the first Inside-Out course in 2002, "It was a soul-penetrating multi-leveled educational experience that not only elevated my intellectual curiosity, but also inspired new hope for our capacity as human beings to engender a more humane and just society. By creating an osmotic learning environment that permeates the psychological walls of race, gender, age, and social status, the Inside-Out model functions as an incubator of unlimited possibilities for individual and collective transformation." (The Inside-Out Center Newsletter, 1(1), April 2010, p.1)

ICOPA's mission is to motivate the abolitionist community while increasing solidarity; provide a forum for the flow and exchange of ideas for advancing abolitionist goals; sensitize and educate the public on these issues and to address questions of viable alternatives. It is currently working on the construction of its new website. For more information on the web about ICOPA XIII, go to http://joanr73.wordpress.com/2010/06/29/blog-from-icopa-xiii-belfast-conference/.

Crime, conflit et justice dans une transition vers la démocratie: Les militants de l'abolition du système pénal se rencontrent à Belfast

Par Claire Delisle

La treizième édition du Comité international sur l'abolition du système pénal (ICOPA) s'est déroulée à Belfast du 23 au 25 juin 2010. La conférence biennale, qui a vu ses débuts au Canada en 1983, prend place partout autour du monde dans des pays tels que le Canada, les États-Unis, les Pays-bas, la Pologne, la Nouvelle-Zélande, l'Espagne, le Costa Rica, le Nigeria, l'Australie, l'Angleterre et cette année, le nord de l'Irlande. Au delà de 90 délégué(e)s sont venu(e)s de l'Amérique du Nord, l'Europe, l'Afrique du sud, l'Océanie et les îles des Caraïbes pour prendre part à trois jours de discussions et d'échanges sur les réalités de l'emprisonnement dans les différentes zones sur le globe, les stratégies d'abolition et les

alternatives pour adresser les nombreux conflits et dommages dans nos communautés, que nous appelons des "crimes". La délégation canadienne comptait sept personnes.

À la fin de chaque conférence, les délégué(e)s choisissent le site de la prochaine. Le site choisit, ICOPA s'assure d'apporter un focus particulier aux réalités de la communauté-hôte. La tenue de la réunion à Belfast cette année juste au moment de la dévolution tant attendue des pouvoirs en matière de justice et de maintien de l'ordre de Londres vers la nouvelle assemblée à Stormont, le parlement de Belfast (résultant du processus de paix en 1998), fut une occasion d'importance capitale pour examiner les réalités des personnes détenues dans les six comtés du nord de l'Irlande.

Étant donné le conflit armé sur ce territoire au cours des trente dernières années du vingtième siècle, et l'incarcération massive des Républicains irlandais, la prison a une signification particulière. D'une part, les délégué(e)s ont pu noter les résultats positifs de la résistance massive entreprise par les prisonniers républicains. Depuis le "blanket" protest, en passant par la grève de la faim, jusqu'à l'initiative d'études dirigée unilatéralement par la direction emprisonnée de l'IRA à l'intérieur des murs, l'étendu et l'intensité de cette résistance a attiré l'attention du monde entier, et a changé, de façon marquée la suite du conflit, étant donné l'initiative de paix proposée par le Sinn Fein en 1993. D'autre part, la campagne contre la criminalisation de la lutte républicaine a eu le résultat que les prisonniers non-politiques ont souvent été (et le sont encore) traités avec le plus grand mépris. De plus, selon ceux qui se portent en appui aux détenu(e)s, le système pénitencier dans le nord est toujours sous la même gouverne répressive qui avait cours durant le conflit armé, rendant les conditions plus dures que la moyenne. On rapporte même que les prisons, et dans le nord, et dans le sud, sont les pires de toute l'Europe occidentale. De surcroît, dans une localité où il existe de nombreux organismes d'ex-détenu(e)s politiques, il n'y avait pas un seule organisme venant en appui aux détenu(e)s non-politiques (appelés "les ordinaires"). ICOPA a servi de tremplin pour une nouvelle initiative de soutien aux incarcéré(e)s, un groupe s'apellant ActionPrisons.

Les sujets abordés durant la conférence ont inclut les femmes et l'emprisonnement; les stratégies d'abolition et alternatives au système pénal; le travail de groupes de détenus tel que COPEL (Coordinadora de Presos Españolas en Lucha); les mouvements d'abolition populaires tel que Critical Resistance aux États-Unis (qui compte au delà de 6 000 membres); l'intensification de la surpopulation carcérale et les conséquences sur la santé des détenus dans les prisons sud-africaines; des conférences sur des sujets variés écrits par des prisonniers; et un panel sur les réalités de la vie des prisonniers politiques et l'héritage de la lutte armée dans le nord de l'Irlande.

En provenance du Canada, Jenn Kilty (Université d'Ottawa) et Leah Devellis (Carleton University) ont présenté "Transcarceration and the Production of 'Grey Space': How Frontline Workers Exercise Spatial Practices in a Halfway House for Women"; Justin Piché (Carleton University) a participé à la "Table ronde sur les perspectives internationales d'abolition" et a également organisé l'atelier sur la revue Journal of Prisoners on Prisons et les conférences présentées par intermédiaire des personnes incarcérées.

Les délégué(e)s ont aussi eu la chance de visionner des long-métrages. Premièrement, ils ont vu *Mickey B* (voir la photo à la page couverture), une adaptation de la pièce shakespearienne, *MacBeth,* tourné dans la prison à sécurité maximale, Maghaberry à Lisburn. Tous les acteurs ainsi que l'équipe de tournage étaient détenus à perpétuité. Il y eut un échange après le visionnement avec le réalisateur Tom Magil, un ex-détenu lui-même et professeur d'art dramatique, et Sam MacLean, un détenu (maintenant en liberté conditionnelle) qui jouait le personnage de Duncan. Des leçons importantes ont pu être tirées sur la nature humaine et la réhabilitation. Ces détenus ont été confiés une mission, encouragés à la suivre jusqu'au bout, et ont développé un sens de collaboration et de camaraderie. De plus, ce projet, quoiqu'approuvé par les autorités carcérales, a été éxécuté sans leur implication directe, sinon qu'un ou deux des gardiens ont joué un rôle dans le film. Pour de plus amples renseignements sur *Mickey B* ou pour commander une copie du DVD, veuillez contacter le réalisateur Tom Magil à tom@esc-film.com.

Le deuxième après-midi, les délégué(e)s ont eu l'occasion de visiter la communauté. D'abord ils se rendirent sur le Shankill Road de Belfast et ont entendu un ex-détenu politique Loyaliste, qui leur a fait une tournée guidée du quartier et les a entretenu sur le processus de paix du point de vue des Loyalistes. Par après, ils se rendirent dans le quartier républicain de West Belfast pour une visite guidée du Falls Road, le site de nombreux événements tragiques du conflit. Plus tard, au *Cultúrlann,* le centre communautaire dévoué à la langue irlandaise, ils ont vu le film *H-3.* Écrit par le gréviste survivant Laurence McKeown et (feu) Brian Campbell, et tourné dans les H-Blocks de la prison Long Kesh en banlieue de Belfast, ce film primé présente la lutte sans compromis des républicains contre la politique de criminalisation du mouvement républicain. Depuis le "blanket protest" jusqu'à la grève de la faim dans laquelle Bobby Sands et neufs de ses camarades sont morts, ce film présente un portrait frappant et sombre des circonstances de cette période carcérale (1976-1981). Pat Sheehan, un autre survivant de la grève de la faim de '81 était sur place pour répondre aux questions sur le conflit, son rôle, sa vie en prison, sur la grève de la faim, et sur le processus de paix. M. Sheehan dirige actuellement le bureau du Moyen-Orient pour le parti Sinn Fein. Pour commander une copie du DVD, veuillez consulter le site www.lovefilm.com. Le réalisateur de *H-3* est Les Blair.

Les participant(e)s ont également été entretenu(e)s sur une initiative États-unienne qui s'apelle "The Inside-Out Prison Exchange Program" qui offre des cours de niveau universitaire à des étudiant(e)s et détenu(e)s, qui se déroulent à l'intérieur des murs d'une prison. Depuis sa création en 2002, Inside-Out a offert 250 cours à 7 500 étudiant(e)s (détenu(e)s et non-détenu(e)s) et compte au delà de 200 instructeurs certifiés. Un des premiers participants détenus dit du projet "C'était une expérience profonde à plusieurs niveaux qui a non seulement élevé ma curiosité intellectuelle, mais qui a fondé un espoir pour notre capacité en tant qu'être humain de créer une société plus humaine et plus juste. Cet environnement osmotique a pénétré les murs psychologiques de la race, du sexe, de l'âge et du statut social. Ce modèle d'apprentissage fonctionne comme un incubateur de possibilités illimités de transformation individuelle et collective." (Inside-Out Newsletter, 1(1), April 2010, p. 1)

La mission d'ICOPA est d'encourager la communauté abolitioniste en tissant des liens de solidarité, en servant de forum pour l'échange d'idées pour atteindre des objectifs d'abolition, en sensibilisant le public sur les enjeux et en s'attardant aux questions des alternatives viables. Les membres d'ICOPA travaillent présentement sur la construction d'un site web. Pour d'autres renseignements sur la conférence ICOPA XIII, consultez le blog http://joanr73.wordpress.com/2010/06/29/blog-from-icopa-xiii-belfast-conference/.

COMING EVENTS / PROCHAINS ÉVÉNEMENTS

(Published in the language submitted / Publiés dans la langue dans laquelle ils sont soumis)

2010 – 2011

September 9 – 10, 2010 / du 9 au 10 septembre 2010

2010 HEALTH FORUM: ABORIGINAL MENTAL ILLNESSES & THE CRIMINAL JUSTICE SYSTEM

The Criminal Justice System in Canada has under its care one of the most vulnerable and mentally unhealthy populations anywhere. The prevalence of serious personality disorders, drug and alcohol dependence, suicidal and self-harming behaviour, and all forms of mental illness (both psychotic and neurotic) is alarmingly high—much higher than in the general population.
Theme / thème: "Addressing Mental Illnesses & the Criminal Justice System: Prevention & Intervention Strategies"
Place / endroit: Days Hotel & Conference Centre, Toronto Airport East
Information / renseignements: Contact Bill Wzarchikoff at wzarchikoff@yahoo.com or telephone 1-888-683-7711 or 604-530-3840www.restorativejustice2010.com

October 18 – 19, 2010 / du 18 au 19 octobre 2010

INTERNATIONAL SERIOUS & ORGANIZED CRIME CONFERENCE 2010

The Australian Institute of Criminology, in partnership with Victoria Police, the Australian Crime Commission, the Australian Federal Police and CrimTrac will host a groundbreaking international conference focused on the fight against serious and organised crime. Organised crime places a significant burden on international economies and communities each year in terms of lost revenue and costs to criminal justice, social, health and welfare systems. Recent estimates suggest the total annual cost of organised crime in Australia is between $10 and $15 billion. The first International Serious and Organised Crime Conference (ISOC 2010) will bring law enforcement, criminal justice, policy and research practitioners from around the world together at the Melbourne Convention and Exhibition Centre on Monday and Tuesday, 18-19 October, 2010 to share best practice and knowledge in the fight against transnational organised crime.
Place / endroit: Melbourne Convention Centre, Melbourne, Australia
Information / renseignements:
http://www.aic.gov.au/events/aic%20upcoming%20events/2010/isoc.aspx

November 14 – 16, 2010 / du 14 au 16 novembre 2010

NATIONAL RESTORATIVE JUSTICE SYMPOSIUM

The Symposium is being hosted by the Johhn Howard Society – Regina Council, with the active collaboration of many other agencies involved in restorative justice.
Theme / thème: "Reflexions: Past, Present and Future"
Place / endroit: Regina, Saskatchewan
Information / renseignements:
www.restorativejustice2010.com

May 29 to June 1, 2011 / du 29 mai au 1er juin, 2011

DEUXIÈME COLLOQUE INTERNATIONAL SUR LA VIOLENCE ENVERS LES FEMMES
SECOND INTERNATIONAL CONFERENCE ON VIOENCE AGAINST WOMEN

CRI-VIFF (the Interdisciplinary Research Center on Family Violence and Violence Against Women) and its *Women, Violence and Vulnerable Situations* research team are pleased to invite you to the Second International Conference on Violence Against Women.Violence Against Women: Complex Realities and New Issues in a Changing World will bring together resèarchers, practitioners, political decision makers, and students from around the world to share knowledge and practices and debate current issues in the field.
Le centre de recherche interdisciplinaire sur la violence familiale et la violence faite aux femmes (CRI-VIFF) et son équipe de recherche Femmes, violences et contextes de vulnérabilité sont heureux de vous inviter à leur deuxième colloque international sur la violence envers les femmes. Intitulé *Violence envers les femmes : réalités complexes et nouveaux enjeux* dans un monde en transformation, ce colloque convie les chercheurs-es, intervenants-es, décideurs-es politiques et étudiants-es de partout dans le monde à faire le point sur les connaissances et pratiques en matière de violences envers les femmes, et sur les enjeux actuels concernant cette problématique.
Theme / thème: "Violence Against Women: Complex Realities and New Issues in a Changing World"
"Violence envers les femmes : réalités complexes et nouveaux enjeux dans un monde en transformation"
Place / endroit: Montréal, Québec
Information / renseignements:
www.conferenceviolence.com

Canadian Criminal Justice Association

Association canadienne de justice pénale